"Ignorance of law excuses no one."—*Legal Maxim*

BUSINESS LAW

FOR

Business Men and Students

BY

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"A plain statement of the rules and principles of law that should be familiar to every practical man and woman."—*Law Journal.*

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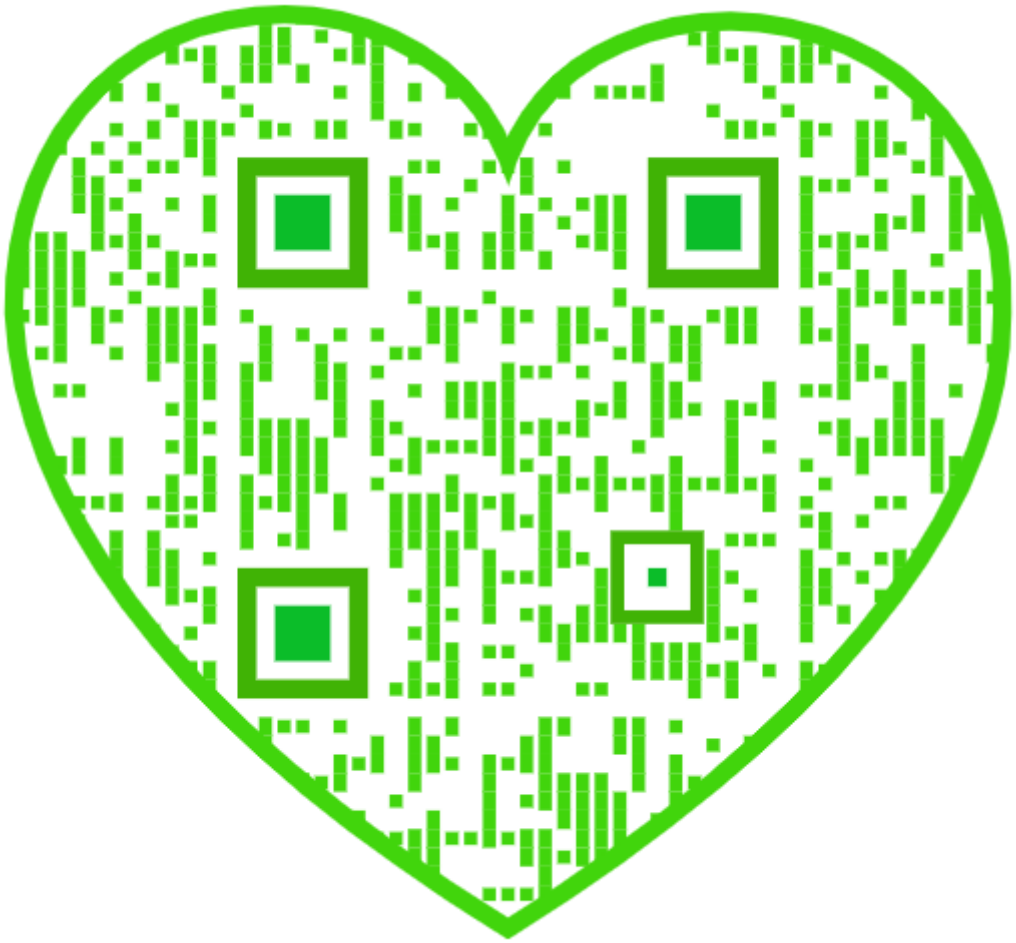

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To R. L. H.

Were the laws as steadfast as your character, this book would never require revision. Were the laws as perfect as your life, the legislators might take a holiday. I beg you to accept this dedication.

B. H.

Battle Creek, June 1, 1900.

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AUTHOR'S STATEMENT.

In this book I have simply answered the questions asked me by business men during the last ten years. I know that these questions are practical and of living interest, because they have all been asked by live and practical men. The fact that the subjects treated have fallen into logical order, merely indicates that I have been mindful of the requirements of the student who remembers statements most easily when they are connectedly arranged. Whenever it has seemed expedient, I have given illustrations — many of them drawn from my own experience as a lawyer — wherein I have endeavored to clearly apply the common facts to principles of law stated.

The pressure of business in this work-a-day world, often leaves the business man without time to consult his attorney. Mastery of the plain and fundamental principles of law is within the attainment of every man. It is a duty he owes to his family, to society, and to himself. It is a kind of business equipment without which he must again and again find himself face to face with opportunity, but unable to act, because his judgment is fettered by the slave-chains of his own ignorance.

This book is written and placed before business men and students to assist them in their splendid struggle toward self-improvement, self-protection, and self-emancipation.

BURRITT HAMILTON.

A GLOSSARY OF LEGAL TERMS.

Ab Initio, from the beginning.
Abatement, a suspension of proceedings.
Abeyance, held in expectancy.
Abscond, to clandestinely leave.
Abstract of Title, a list of consecutive conveyances.
Acceptance, an agreement to pay a bill of exchange.
Acceptor, one who makes an acceptance.
Accessory, one who, not being a principal, assists in the commission of a crime.
Accident, an unexpected event happening without human agency.
Accommodation Paper, negotiable paper made without consideration.
Accomplice, one, not a principal, who assists in the commission of a crime.
Accord, an agreed satisfaction of a claim.
Account, a detailed statement of mutual demands in the nature of debits and credits.
Account Book, a book in which accounts are kept.
Account Current, an open or running account.
Account Stated, an agreed balance of accounts.
Accountant, one skilled in accounts.
Accused, one charged with a crime or misdemeanor.
Acknowledgment, a voluntary declaration of the execution of an instrument before a proper officer.
Acquit, to discharge.

Act, something done or established, as a statute passed by legislature.

Act of God, an accident arising through natural cause apart from human means.

Action, in law, a lawsuit.

Actionable, that for which an action can be brought.

Ad Damnum, in pleading, a statement of damages claimed.

Adjacent, next to, or near.

Administrator, a person authorized by a court to settle the estate of a deceased person.

Admiralty, a court having jurisdiction of maritime causes.

Adverse Possession, the enjoyment of land under circumstances amounting to an apparent claim of title.

Advocate, one who presents causes in court.

Affidavit, a written statement sworn to before a proper officer.

Affinity, relationship existing in consequence of marriage.

Affirm, to ratify.

Aforesaid, before mentioned.

Aforethought, premeditated.

Agency, a relation between agent and principal.

Agent, one who undertakes the performance of the affairs of another.

Aggregate, a collection of items.

Agister, one who takes animals to pasture for hire.

Agreement, the meeting of minds upon an identical purpose.

Alibi, presence in another place.
Alien, a foreigner.
Alienation, the transfer of property.
Alimony, an allowance ordered by a court to be paid by a husband for the support of his wife.
Allegation, an assertion.
Allegiance, the tie which binds a citizen to his government.
Ambiguity, uncertainty of meaning.
Ambulatory, changeable.
Ancestor, one who has preceded another in a direct line of descent.
Ancillary, auxiliary.
Annuity, a fixed sum, payable yearly.
Appeal, the removal of a cause from an inferior to a superior court.
Appellant, one who makes an appeal.
Appraiser, a person chosen to estimate the value of property.
Appurtenances, things which pass by conveyance of some principal object to which they are attached.
Arraignment, calling the accused to the bar of the court to answer an accusation.
Arrears, money due and unpaid.
Arrest, to deprive a person of liberty.
Arson, a malicious burning of the buildings of another.
Assault, the unlawful offer of violence or application of force to the person of another.
Assent, approval.
Assess, to fix payment, to tax.

Assign, to transfer.
Assignee, one to whom something is assigned.
Assignor, one who assigns something.
Association, a union of persons for a common purpose.
Assumpsit, an action on a contract.
Attachment, a seizure of property pending a suit.
Attestation, the act of witnessing an instrument.
Attorney, an agent for the transaction of legal business.
Auction, a public sale of property.
Authority, the right to act.
Aver, to assert.
Award, the judgment of arbitrators.
Badge, a mark or sign.
Baggage, articles ordinarily carried by travelers.
Bail, sureties for the appearance of a defendant in court.
Bailee, one to whom goods are delivered in trust.
Bailment, goods delivered to a bailee.
Bank, a place for the deposit of money.
Bankrupt, one guilty of acts of bankruptcy.
Bearer, one in possession.
Bequeath, a gift of personal property by will.
Bill of Exchange, a written order for the payment of money.
Bill of Lading, a carrier's contract and receipt for goods.
Bill of Sale, a written transfer of title to personal property.
Bond, a sealed obligation.

Bribery, the giving or receiving of an unlawful reward against public policy.

By-laws, rules made by a corporation or an association for its own government.

Capital Stock, a sum subscribed as the working capital of a corporation.

Case, the subject-matter of litigation.

Certainty, distinctness.

Certificate, a written, formal, and authoritative statement of a fact.

Charter, a grant of power made by a sovereignty.

Chattel, movable property.

Check, a demand draft drawn on a bank.

Civil Action, the method of enforcing a private right.

Codicil, an amendment to a will.

Cognizance, recognition.

Collusion, an agreement to defraud.

Comity, courtesy.

Competency, legal fitness.

Compromise, an agreement reached by means of concessions.

Consanguinity, blood relationship.

Consideration, the material cause which induces a contract.

Consign, to send goods to an agent.

Consignee, one to whom goods are consigned.

Consignment, goods sent to a consignee.

Constitution, the fundamental law of a country.

Constitutional, that which is in harmony with a constitution.

Construction, the determination of the meaning of language.

Contract, a lawful and binding agreement.
Conveyance, a transfer of the title to property.
Copy, an accurate transcript of an original writing.
Copyright, an exclusive right to publish.
Corporation, an artificial, legal entity, having certain powers conferred by law.
Corporeal Hereditaments, permanent objects which are the subject of inheritance.
Costs, the lawful expense of litigation.
Counsel, one who gives advice in matters of law.
Covenant, a solemn agreement.
Credit, the ability to borrow, based upon moral certainty of repayment.
Damages, indemnity for injury.
Day Book, a record of daily transactions.
De Facto, in fact.
De Jure, in law.
Debt, a sum due.
Decree, the judgment of a court of equity.
Deed, a written conveyance of land.
Defendant, one against whom a suit is brought.
Delivery, the transfer of possession.
Demand, a claim.
Demise, a conveyance.
Deponent, one who makes a statement under oath.
Deposit, a gratuitous bailment.
Deposition, the written testimony of a witness taken in proper form.
Devise, a gift of real estate by will.
Devisee, one to whom a devise is made.
Devisor, one who makes a devise.

Dictum, an unauthoritative opinion stated by a court.
Diligence, care, application.
Directors, the executive board of a corporation.
Discretion, prudence.
Dishonor, the refusal to accept or to pay a bill of exchange.
Domicile, a place of abode.
Dower, the interest of a wife in the lands of her husband.
Ejectment, an action for the recovery of possession of real estate.
Embezzlement, misappropriation by an agent of the property of his principal.
Equity, the application of natural justice according to legal rules.
Estate, the aggregate property of a person.
Evidence, means of proof.
Ex Post Facto, after the act.
Execution, the means whereby the judgment of a court is executed.
Executor, one appointed by will to have charge of the settlement of an estate.
Executrix, the feminine form of executor.
Experts, persons skilled by experience.
Express, stated.
Extinguishment, destruction.
Factor, an agent employed as a consignee.
False Imprisonment, any unlawful restraint of personal liberty.
Fee Simple, an estate of inheritance.
Firm, a copartnership.

Fixtures, removable personal property affixed to real estate.
Foreign, belonging to another country.
Forfeit, to lose as a penalty.
Form, the model of a legal instrument.
Forum, a court of justice.
Fraud, an intentional act misleading another to his injury.
Funds, cash on hand.
Garnishment, the attachment of the property of a debtor in the hands of a third person.
Gift, a voluntary conveyance.
Good Will, the public favor accorded an established business.
Grant, a transfer of real estate.
Grantee, one to whom a grant is made.
Guarantor, one who makes a guaranty.
Guaranty, a guarantor's undertaking to answer for another's liability.
Guardian, one who has legal charge of a ward's person or property.
Guest, a traveler who stays at an inn.
Heir, one who inherits by law.
Hypothecation delivery of chattel property as a pledge.
Idiot, a person without understanding from birth.
Ignorance, the lack of knowledge.
Immoral, contrary to good morals.
Inception, the beginning.
Incorporeal Hereditaments, intangible property which is the subject of inheritance.

Incumbrance, a lien or other right affecting the unity of the title to property.

Indorsement, a writing on the back of a negotiable instrument.

Indorser, one who writes his name on the back of a negotiable instrument.

Infant, one under the age of majority.

Infringement, a violation of legal protection afforded by a patent, trade-mark, or copyright.

Injunction, the formal prohibition of an act by a court.

Inn, a stopping place for travelers, a hotel.

Innkeeper, one who keeps an inn.

Insanity, unsoundness of the mental faculties.

Insolvency, inability to pay debts.

Installment, part of a debt due by contract.

Issue, a point in controversy.

Jeopardy, peril.

Joinder, union.

Joint Obligation, a contract whereby several persons are concurrently bound.

Judgment, the authoritative decision of a court.

Jurisdiction, authority to perform a judicial act.

Justice, the disposition to at all times render to every man his due.

Justification, a valid excuse.

Knowledge, correct information.

Laches, negligence.

Lands, things immovable, real estate.

Landmark, a monument by which a location is determined.

Landlord, the proprietor of lands.
Larceny, theft.
Law, a rule of action.
Law Merchant, the immemorial usages of merchants.
Lawful, not contrary to law.
Lease, a contract for temporary possession.
Legacy, a gift by will.
Legal Tender, money made lawful in payment of debts.
Lessee, one to whom a lease is made.
Levy, seizure.
Lex Fori, the law of the forum.
Lex Loci, the law of the place.
Libel, published written defamation.
Liberty, freedom from restraint.
License, a permission.
Lien, a claim upon property.
Limitation, a time fixed for the performance of an act.
Les Pendens, a pending suit.
Litigation, a legal contest.
Lucid Intervals, periods of sanity.
Maker, a term applied to one who makes a promissory note.
Mark, a sign standing for a signature.
Master, one who has others in his employment.
Maxim, an established truth.
Measure, a standard of computation.
Merger, the extinguishment of a lesser claim in a greater.
Misnomer, the use of a wrong name.

Mistake, an unintentional act.
Money, the legally established means of exchange.
Mortgage, a voluntary lien given upon property.
Mortgagee, one to whom a mortgage is given.
Mortgagor, one who gives a mortgage.
Negligence, the want of due diligence.
Negotiable, capable of being sold.
Notice, information of an act done or to be done.
Notice to Quit, a landlord's request to his tenant to deliver up property.
Nudum Pactum, a contract made without consideration.
Nuisance, a matter of annoyance.
Nullity, an act having no legal force.
Nuncupative Will, a will made verbally.
Oath, a formal pledge to truthfulness.
Obligation, a binding contract.
Obligee, the person in whose favor an obligation is made.
Obligor, one making an obligation.
Offer, a proposition to perform something.
Omission, a neglect to perform something.
Operation of Law, legal rights arising independently of agreement.
Order, a command.
Ordinance, a local statute.
Outlaw, beyond the reach of the law.
Ownership, the title to property.
Paramount, that which is superior.
Parcel, a part of an estate.
Parol, verbal.

Parties, persons taking part in the performance of an act.
Partners, members of a partnership.
Patent, a grant of special privilege by a government.
Payment, the performance of an obligation to pay.
Penalty, a forfeiture imposed upon the performance or non-performance of some act.
Pleadings, the documents by which a suit is brought to an issue.
Pledge, property deposited as a security.
Possession, exercise of proprietorship.
Power, the ability or right to do a certain thing.
Preamble, an introductory statement.
Preference, the extension of a special advantage to a particular creditor.
Price, money consideration.
Priority, precedence.
Process, the means by which a person is brought into court.
Profits, gain.
Promise, an engagement to do or not to do a certain thing.
Proposal, an offer.
Proxy, a person appointed as agent. The term is also used to denote the instrument by which the agent is appointed.
Publication, the act by which a thing is made public.
Punishment, a penalty for wrong doing.
Quasi, a term used to denote similarity.
Quit Claim, a release by deed.
Receipt, a written acknowledgment of payment.

Rescission, a withdrawal.
Record, a written recital of past events.
Recoupment, the assertion of a counterclaim.
Release, the abandonment of a claim.
Remedy, means employed to recover a right or redress an injury.
Rent, compensation for the use of property.
Replevin, an action for the recovery of possession of chattels.
Revocation, recall of power.
Right, a just claim.
Said, before mentioned.
Salary, a compensation for services.
Sale, the acts and agreement by which title to property is transferred.
Scrivener, one who writes legal instruments.
Security, an instrument which renders certain the performance of a contract.
Set-off, a counterclaim.
Slander, spoken defamation.
Subrogation, a substitution of one creditor in the place of another.
Subpœna, process ordering a witness to appear in court.
Suit, an action at law.
Sunday, the first day of the week.
Surety, a person who binds himself to answer for the debt or default of another.
Suretyship, being surety for another.
Tax, an involuntary contribution to the support of a government.

Tenant, one who occupies lands or tenements temporarily.
Tender, an offer to deliver something in performance of an obligation.
Tenement, real estate capable of being held by a tenant.
Tenure, the mode by which a person holds an estate in lands.
Testamentary, pertaining to a will.
Testator, one who has made a will.
Time, the measure of duration.
Tort, a wrong arising independent of contract.
Trade-mark, an adopted emblem or symbol.
Trustee, one who accepts a trust.
Ultra Vires, beyond power.
Value Received, a term denoting consideration.
Vested Right, a fixed interest.
Vigilance, proper attention.
Wager, a bet.
Ward, one under guardianship.
Waste, intentional destruction of corporeal hereditaments.
Will, a disposition of property to take effect after death.
Witness, one who testifies.

INTRODUCTION.

DEFINITION, PURPOSE, HISTORY, AND CLASSIFICATIONS OF LAW.

"Ignorance of law excuses no one." — *Legal Maxim.*

1. **Law Defined and Explained.**
2. **Human Law Defined.**
3. **The Purpose of Law.**
4. **The History of Law.**
5. **How Law is Expressed.**
6. **Laws Classified.**

1. **Law Defined and Explained.**— Every law is a rule of conduct. If I throw a ball into the air, it goes up by the law of potential energy and comes down by the law of gravitation. The grocer weighs his tea and the astronomer his star, by law.

2. **Human Law Defined.**— Law, as applied to the rights and duties of persons, is a rule of human conduct prescribed by proper authority. It is this division of law that we are about to consider.

3. **The Purpose of Law.**— The purpose of law is to render business and social relations certain by making definite, permanent, and enforcible the right to life, liberty, and property.

4. **The History of Law.**— The first law was force. Right was measured by might. Possession was the paramount proof of title. Amid nature's

vast treasures, man, the savage, stood in trembling want, the acreless tenant of continents.

At last people congregated in communities. Families, united by ties of blood, formed villages. About these they built walls for protection against the tribes without. Within these walls generations came and went. Villages grew to cities. Children dwelt in the houses of their ancestors. The associations of childhood, the memories of later life, fixed the affections of people to the plots of ground occupied by their forefathers. They claimed these lands by right of immemorial occupancy, and so arose the first titles to real estate.

With mutual dependence for protection came mutual dependence for other necessaries of life. The semicivilized villagers divided the pursuits of toil. Some hunted, while others stood guard, and when, by reason of the multitude of hunters, game ceased to abound, some turned to rearing domestic animals, and some to the tillage of the soil. Then markets arose for the interchange of products, and so, out of the necessities of civilization came commerce. Out of customs controlling commerce, sprang Commercial Law.

5. How Law Is Expressed.— All law is either written or unwritten. Written law depends for its authority upon legislative act. Unwritten law depends for its authority upon immemorial usage and the principles of common justice and sound conscience. Written law is loosely termed "statute law," and it comprises constitutions, statutes, ordi-

nances, resolutions, and by-laws. Unwritten laws are called "common law," and while the vast body of this common law has been expressed in court decisions, termed precedents, these decisions add nothing to the law, but are merely declarative of the rules which existed before the decisions were made.

6. Law Classified.— Law may be classified in the order of its authority, as follows: Constitutional Law, Statute Law, Common Law. A statute in conflict with the constitution under which it is made is called "unconstitutional," and is absolutely void. A rule of common law, in conflict with a statute, is set aside by the statute. There is a tendency in this country to express common laws in the form of statutes, for the purpose of rendering the law certain.

BOOK ONE.

THE LAW OF CONTRACTS.

FORMATION, INTERPRETATION, AND TERMINATION.

CHAPTER I.

DEFINITION, USES, AND TESTS OF CONTRACTS.

"Words spoken vanish; words written remain."—*Legal Maxim.*

7. Definition of Contract.
8. Uses of Contracts.
9. A Duty of Business Men.
10. A Valid Contract.
11. A Voidable Contract.
12. A Void Contract.
13. The Test of the Validity of a Contract.

7. Definition of Contract.— A contract is an agreement properly made between two or more competent persons, upon a sufficient consideration, to do, or not to do, a certain lawful thing.

8. Uses of Contracts.— The contract is the Atlas on whose shoulders rests the commercial world. Whether it be the hiring of a laborer, or the construction of a railway; the building of a skiff, or the armament of a navy; whether it be the purchase of a pin, or of a palace, the transaction is governed by the Law of Contracts.

9. A Duty of Business Men.— Aside from natural endowments, his knowledge of Business Law is the true measure of the ability of a business man. In his experience, the law of contracts occupies a most conspicuous position. It is his duty to be able to ascertain for himself promptly, and at any time,

whether a contract that he is about to make or receive is Valid, Voidable, or Void.

10. A Valid Contract.—A Valid Contract is one which is legally binding.

11. A Voidable Contract.— A Voidable Contract is one which may be legally treated as either valid or void by one or more of the parties to it. Thus, a contract made by a person under the age of twenty-one years is said to be voidable, because its maker may lawfully elect either to perform it, or to disregard it.

12. A Void Contract.— A Void Contract is one which is not legally binding. Thus, a contract in violation of the laws of the land is void, because the law refuses to enforce its own violation.

13. The Test of the Validity of a Contract. — The definition of a contract given sets forth all the elements required in a valid contract. Every contract should possess all these elements. Every contract —

(I) Must be the result of an agreement;
(II) Must be properly made;
(III) Must be between competent parties;
(IV) Must be upon a sufficient consideration;
(V) Must be for an act or forbearance;
(VI) Must be certain in its purpose;
(VII) Must be for a lawful purpose.

Any contract which lacks any one or more of the elements above named is defective, and, according

to the seriousness of the defect, will be found to rank as either voidable or void.

A business man, in considering the validity of a contract, should mentally apply the test above given. In the following chapters, we shall discuss the elements of validity in detail.

CHAPTER II.

AGREEMENT.

"Words are evidence of intention."—*Legal Maxim.*

14. The Nature of an Agreement.
15. The Elements of an Agreement.
16. Acceptance.
17. Time for Acceptance.
18. Reasonable Time Explained.
19. Acceptance by Mail or Telegraph.
20. Withdrawal of Offer.
21. When a Revocation Becomes Effective.
22. Revocation by Telegram.
23. Orders Taken by Traveling Salesmen.
24. Stipulation against Countermand.
25. Auction Sales.
26. Advertisements and Business Circulars.
27. Conditions under Which Agreement Can Not Be Made.
28. Mistake of a Material Fact.
29. Misrepresentation of a Material Fact.
30. Misrepresentations in Applications for Insurance.
31. Fraud.
32. The Effect of Fraud.
33. Threats and Force.
34. Undue Influence.

14. The Nature of an Agreement.—Agreement consists in the meeting of the minds of the contracting parties upon an identical purpose. If the minds of the parties fail to meet, there is no agree-

ment. Without an agreement, express or implied, there can be no contract.

Illustration.—Ward said to Hill, "I will sell you my horse for $200." Hill replied, "I will give you $150 for the horse." In this case there was no agreement, for the minds of the parties did not meet upon an identical purpose. If Hill had said, "I will accept the offer," or words to that effect, an agreement would have resulted. If Hill had said, "I will consider it," or, "I will give you my answer to-morrow," no immediate agreement would have been produced.

15. The Elements of an Agreement.—Every agreement is produced by an offer and an acceptance. Agreement may arise from words or from acts.

Illustration.—If I say to you, "I will sell you my watch for $100," and you reply, "I will take it at that price," we have expressed an agreement by our *words*.

Again, if I, being a tradesman, display goods for sale, and you take them up and appropriate them to your own use, an agreement on your part to pay their price arises from your *act*.

Illustration.—Ward sent unordered goods to the house of Hill. Hill used the goods. Ward lawfully required Hill to pay the price of the goods consumed. In this case, the offer was made by the delivery of the goods, and the acceptance was made by their use.

16. Acceptance.—The acceptance must be coextensive with the offer, or no contract results.

Illustration.—Wright telegraphed Day as follows: "Will sell you my entire stock at $3,000."

Day wired in reply: "Will accept half your stock at $1,500." No contract resulted from these negotiations for the reason that the acceptance was not commensurate with the offer.

17. Time for Acceptance.—When the time for acceptance is not specified in the offer, acceptance need not be made at once, but will be binding if made within reasonable time.

Illustration.—Gray said to Wood: "I will lease you my house for one year at a rental of $2,000 per annum." Wood replied: "I will advise you of my decision later." After two days had elapsed, Wood communicated to Gray acceptance of the proposition. The time within which the acceptance was made was held to be reasonable and the contract was declared valid.

18. Reasonable Time Explained.—In the preceding section, the term "reasonable time" was used. In law, in all cases where an act is to be performed, if no time is set for performance, the act must be performed within a reasonable time, and what is a reasonable time is governed by the facts surrounding each particular case. It is a question to be settled by the exercise of sound judgment.

Illustration.—If Gray, in the case last above cited, had delayed several weeks in reaching a decision, his acceptance could not have been said to have been made within a reasonable time.

19. Acceptance by Mail or Telegraph.—An acceptance by mail is accomplished when the letter of acceptance is properly posted. An acceptance

by telegraph is accomplished when the message of acceptance is delivered in good faith, and with charges prepaid, to the telegraph company for transmission to the offerer. It is not essential that the letter or message of acceptance actually reach the offerer. The minds of the parties are held to have met at the moment the acceptance was put in due course of transmission.

Illustration.— Jones mailed Crane a letter wherein he accepted an offer previously made by Crane. The mail train was wrecked, and the letter was destroyed. Crane was held bound by Jones's acceptance, although he never received it.

20. Withdrawal of Offer.— It is a general rule that an offer may always be withdrawn until it has been accepted.

Illustration.— On March 10, 1900, Miller sent King a mail order for certain goods. Before King had mailed acceptance, or had signified his acceptance by delivering the goods to a common carrier for shipment to Miller, he received the following telegram, signed by Miller: "I hereby countermand my order mailed you March 10, last." King ignored the countermand, and shipped the goods. Miller refused to receive them. King sued Miller for damages. The court properly held that the telegram had effectually withdrawn the offer, and that Miller was not bound to receive, or pay for, the goods.

21. When a Revocation Becomes Effective. —Revocation of an offer, transmitted by mail or telegraph, becomes effective, not from the time it is

put in course of transmission, but from the time it is actually communicated to the offeree.

Illustration.— Hoyt made Barnes an offer by letter. Barnes wrote a letter of acceptance which his office boy neglected to mail. While the mailing of the letter of acceptance was delayed, the letter carrier placed Hoyt's revocation of the offer in Barnes's hands. The offer was held to be thereby revoked, and the subsequent mailing of Barnes's letter of acceptance would have been without effect.

If Barnes or his office boy had mailed the letter of acceptance before receipt of the letter of revocation, the acceptance would have been binding upon Hoyt, and the revocation would have been inoperative.

22. Revocation by Telegram.— It is a common practice to revoke by telegram an offer made by letter, and, if the telegram of revocation is received before acceptance of the offer, no acceptance made thereafter will be binding. The telegraph is specially useful for purposes of revocation on account of its superior speed.

Illustration. — Palmer, of St. Louis, ordered goods from Donovan of New York. Later, and during the same day, he ascertained that the goods could be bought more cheaply in Chicago. It would undoubtedly have been impossible to revoke by letter the order made by letter, as, upon receipt of the letter, Donovan, following the usual practice of punctual business men, would have mailed his notification of acceptance to Palmer. The letter of revocation received thereafter would have been ineffective.

Palmer's telegram, however, reached Donovan even before the order had arrived at New York, and consequently countermanded the order effectively.

23. Orders Taken by Traveling Salesmen. — Traveling salesmen have, in general, no power to sell. Their authority is usually limited to the solicitation of orders. These orders remain subject to the approval of the house which the salesman represents. Such orders may be countermanded at any time before acceptance by the house. This acceptance may be made by mail, telegraph, telephone, or by shipment of the goods ordered.

Illustration.— Jones gave to Wallace, who was the traveling salesman of Blank & Co., an order for a chest of tea. Upon receipt of the order, Blank & Co. immediately delivered the tea to a railroad company for transmission to Jones. After the tea had been so delivered, Blank & Co. received a telegram, sent by Jones, revoking the order. The revocation was held to be inoperative, as acceptance had already been made by shipment of the goods.

24. Stipulation against Countermand. — Many order blanks contain provisions to the effect that the order given thereupon shall not be subject to countermand. These stipulations are generally without consideration, and are usually void.

25. Auction Sales.— At an auction sale, each bid is an offer. A bid may be withdrawn at any time before the hammer falls, or acceptance is otherwise expressed. After acceptance, the bid is irrevocable.

Illustration.— Fargo attended an auction sale, and bid $100 on a horse there exposed by the auctioneer for purchase. After vainly endeavoring to secure other bids, the auctioneer brought down his hammer, saying: "Sold to Mr. Fargo for $100." Fargo then endeavored to withdraw his bid, and refused to pay for the horse. Suit was brought against him for breach of contract, and he was held liable on the theory that his bid and the acceptance thereof by the auctioneer, who acted as the agent of the owner of the horse, amounted to a complete contract.

26. Advertisements and Business Circulars.— Advertisements and business circulars, published in papers or mailed in pamphlets, or by other means, to individual persons, for the purpose only of calling attention to the quality or price of goods, are not such offers as will create a binding bargain by their mere acceptance.

Illustration.— White, a coal-dealer, advertised to sell chestnut coal at $5 per ton. Black wrote White a letter wherein he said, "Having seen your advertisement to sell chestnut coal at $5 per ton, I hereby order ten tons of the same at that price." Before Black's letter was received by White, the price of coal had advanced. White declined to deliver the coal on the terms named. It was properly held by the court that the acceptance of a mere advertisement constituted no binding contract.

27. Conditions under Which Agreement can not be Made.— Whenever by reason of—

(I) Mistake of a material fact,

(II) Misrepresentation of a material fact,

(III) Fraud,
(IV) Threats or force, or,
(V) Undue influence,

the minds of the parties fail to meet upon a common purpose, there is no agreement, and any contract based upon such negotiations is voidable at the option of the injured party.

28. (I) Mistake of a Material Fact.— Mistake of a material fact, to render a contract voidable, must not only be a mistake of an important fact, but must be such a mistake as relates to the substance of the contract as a whole.

> **Illustration.**— Tompkins offered Beach a horse, on which he had named a price of $150, which Beach, mistakenly thinking the price to be $50, accepted. When payment of $150 was demanded, Beach, being able to prove his mistake, tendered back the horse, and refused payment. It was properly held by the court that the mistake was of a material fact relating to the whole contract, and that the minds of the parties had never met upon an identical purpose.

29. (II) Misrepresentation of a Material Fact.— Misrepresentation may be (a) unintentional, (b) reckless, or (c) intentional.

(a) Unintentional misrepresentation of a material fact will be ground for the avoidance of a contract only when it is of such a nature as to destroy the assent necessary to the formation of a binding agreement.

> **Illustration.**— Brown sold Clay a horse which he mistakenly represented to be safe as a driving horse for children. Clay bought the horse expressly on

account of the representation of its gentleness. Brown was honestly mistaken as to the character of the animal, and it immediately proved itself unsafe and vicious. It was held that Clay was entitled to tender back the horse and receive a return of his money, and that the contract was void by reason of Brown's unintentional misrepresentation.

(b) Reckless misstatement has the effect of intentional misstatement.

(c) Intentional misstatement of a material fact entitles the person injured by it to elect to treat the agreement tainted by the falsehood as void.

Illustration.— Sweet deeded Grant an orange grove in Florida in exchange for a homestead in Michigan, expressly representing that the orange grove was in full bearing and in thrifty condition. Grant went to Florida and discovered that the grove had been destroyed by frosts some years before, of which fact Sweet had full knowledge. He returned to the North and tendered back to Sweet conveyance of his Florida lands and demanded back his homestead. The court sustained Grant's claim, and his homestead was restored to him on the ground that the agreement under which the exchange of property was made was procured through the intentional misstatement of a material fact, amounting to a fraud, by Sweet.

30. Misrepresentations in Applications for Insurance.— Misrepresentation, intentional or unintentional, made in an application for a policy of insurance will render the policy voidable, before or after loss, at the option of the insurer. This is the

general rule. It has, however, been modified by statute in several of the States.

Illustration.— Jones made application for a policy of life insurance in which he stated that his parents had both died of old age. Jones, shortly after receiving his policy of insurance based on this application, died of consumption. It was then learned that both of his parents had died, not of old age, but from consumption. It was properly held by the court that the misrepresentation contained in the application for insurance made by Jones, rendered the policy of insurance void.

31. (III) Fraud.— Fraud is the successful employment of any trick or false representation, used with the intention of inducing another to act against his own interest.

Illustration.— Anthony purchased a car-load of damaged wheat. Finding that it was unsalable, he caused a portion of it to be removed from the car, and good wheat to be substituted in its stead, leaving, however, a portion of the damaged wheat still in the car. He then sold the car lot, representing it to be equal in quality to the good wheat which appeared upon the top and accessible portions of the car. When the fraud was detected, an action was brought by the purchasers for the damage they had sustained, and the court upheld their claim. The measure of their damages was held to be the difference in value between the wheat which they were fraudulently made to believe they had bought, and the wheat which they actually received.

32. The Effect of Fraud.— One who has been defrauded may (a) rescind the contract, or (b) affirm

the contract and sue for such damages as he has sustained by reason of the fraud. The former remedy must be exercised promptly. One can not accept the benefits of a contract and then escape its burdens.

Illustration.— Gregory purchased from Wells a horse which Wells had represented to be "willing and kind." Gregory soon discovered that the horse was of the class commonly termed "balky." Possessing confidence in his own horsemanship, however, he retained the horse for a period of weeks, working it upon his farm. During this period the morose disposition of the animal, and its inclination to indulge in long periods of restful reverie increased. Finally Gregory, concluding that the character of the animal was beyond reformation, tendered it back to Wells and demanded his money. Wells intimated that he was not maintaining a reformatory for horses, and declined to receive the animal or return its price. It was held that Gregory's delay in tendering back the horse had barred his right to this remedy, and that his only recourse was in a suit for damages based upon the fraud perpetrated by Wells.

33. (IV) Threats and Force.— An agreement to be binding must be voluntary. An agreement extorted by actual or threatened violence or by imprisonment to the person or property of the promisor is voidable at the promisor's option.

Illustration.— Grimes was induced to deed his farm to Smithers by Smithers's threat that he would imprison Grimes unless such deed were made. The deed was held voidable at the option of Grimes.

34. (V) Undue Influence.— Undue influence is an unconscionable use of power arising out of circum-

stances especially favorable to the control of the will of another. Undue influence, to avoid a contract, must be such as to negative the idea of voluntary agreement.

Illustration.— A young lady who had just attained her majority became surety for her uncle's debts. She was an orphan, and her only home was with this uncle. She had resided with him for many years. She had been accustomed to obey him, and, in this case, had become his surety in obedience to his command. The court held that her contract to suretyship was induced by undue influence, and that it could not be enforced.

CHAPTER III.

THE FORM OF A CONTRACT.

"Error dwells in general expressions."—*Legal Maxim.*

35. Contracts Classified.
36. Verbal Contracts.
37. Written Contracts.
38. Contracts Under Seal.
39. Contracts not Under Seal.
40. A Result of Experience.
41. The Statute of Frauds.
42. Contracts Incapable of Being Performed in One Year.
43. Contracts to Answer for the Debt, Default, or Misdoings of Another.
44. Contracts Transferring an Interest in Real Estate.
45. Payment of Earnest Money in Real Estate Transactions.
46. Standing Timber is Real Estate.
47. Contracts of an Executor or Administrator to Answer for Damages Out of His Own Estate.
48. Contracts in Consideration of Marriage.
49. Contracts for the Sale of Personal Property.
50. Letters as Written Contracts.
51. The Contents of a Contract.
52. The Expression of the Contract.
53. Errors, Omissions and Discrepancies.
54. The Construction of Contracts.
55. A Contract "Properly Made."
56. Sunday Contracts for Benevolent and Religious Purposes.

57. Secular Contracts.
58. Negotiations Made on Sunday, but Consummated on a Secular Day.

35. Contracts Classified.—(I) Contracts, as to their time of performance, are either executed or executory. An Executed Contract is one that has been fully performed, as where a person buys and pays for goods which are delivered to him immediately. An Executory Contract is one in which some act remains to be done, as where a person agrees to deliver certain goods to another at a future date.

(II) Contracts, as to their form, are either verbal or written. A Verbal Contract is one which has not been reduced to writing and signed. A Written Contract is one which has been reduced to writing and signed. A Verbal Contract, to be of service in a court of justice, must be proved by witnesses. A Written Contract is the best evidence in all courts of the agreements it contains.

Written Contracts are either unilateral or bilateral. A contract consisting of a promise on one side only, as, for example, a promissory note is called a unilateral contract. A contract consisting of mutual promises, as, for example, a contract between vendor and vendee, in which the vendor agrees to deliver goods for a price which the vendee agrees to pay, is called a bilateral contract.

36. Verbal Contracts.—Business prudence requires that, whenever practicable, executory contracts should be reduced to writing. As a matter of

law, many verbal contracts are valid. Thus, a lease of lands for a period not exceeding one year, or a sale of personal property when immediate delivery is made, or when a full or part payment of the purchase price is made, "to bind the bargain," or, in the absence of such payment or delivery, when the value of the property does not exceed a certain amount, usually fixed by statute at $50, would be valid, though not in writing.

37. Written Contracts.— There are two further classifications of written contracts:—

(I) Contracts under seal, and—

(II) Contracts not under seal.

38. (I) **Contracts Under Seal.**— The significance of the seal has been greatly abridged by statutes in the several States. Formerly, a gratuitous promise, which would have been absolutely void if made verbally or in an *unsealed* instrument, was binding if contained in an instrument under seal.

The seal comes to us as a worthless heritage from the earlier days of Anglo-Saxon ignorance. The earliest method of executing contracts was by seal, instead of by signature. Our early English ancestors were more successful as soldiers than as scholars. Very few of them were able to write their own names. This difficulty was overcome by the use of seal rings, which were worn by all men of consequence. Each seal was engraved with a coat of arms, or other device, peculiar to its owner, which would enable him to identify it, very much as business men of the present day identify their own signatures. When an

instrument was to be executed, wax was melted and placed in the position now occupied by the signature. The person wishing to execute the instrument made the impression of his ring upon the wax, and the document, having been duly "sealed and delivered," was as valid for all purposes as it would now be if *signed*, sealed, and delivered. This method presented two serious difficulties. The seal could be easily counterfeited or duplicated, and it was not self-evident of the authorship of the instrument.

The seal was regarded as proof of consideration, but now, in most States, the want of consideration may be shown as defense against even a sealed instrument, and many States have abolished all distinction between sealed and unsealed instruments.

The most usual and practical distinction between sealed and unsealed instruments is that contracts under seal are, under laws of most States, given a longer period of life before being barred by the statute of limitations.

39. (II) **Contracts Not Under Seal.**— A vast majority of contracts are not under seal. Negotiable paper, as a rule, is never sealed. Formerly, it was thought that all contracts made by corporations, to be valid, must be made under the seal of the corporation. It is now well settled that, in the absence of charter and statutory provisions to the contrary, a corporation may execute all contracts in the same manner as a natural person.

40. A Result of Experience.— The accumulated experience of centuries favors written contracts.

In the year A. D. 1678, an act was passed in England, entitled: "An Act for the Prevention of Frauds and Perjuries." Its purpose was to check the perjuries and frauds arising from the uncertainty of verbal contracts. It struck at the root of the matter. It required certain contracts to be in writing. Failure to reduce such contracts to that form rendered them incapable of proof in court. So wise was this legislation that it has been adopted, in substance, by nearly every State in the Union. To this statute, wherever found, is applied the name, "The Statute of Frauds."

41. The Statute of Frauds.— By the usual terms of this statute the following classes of contracts, to be effective, must be in writing, signed by the parties to be bound, or by their agents:—

(I) Contracts incapable of being performed in one year;

(II) Contracts to answer for the debt, default, or misdoings of another;

(III) Contracts transferring any interest in real estate;

(IV) Contracts of an executor or administrator to answer for damages out of his own estate;

(V) Contracts in consideration of marriage, except mutual promises to marry.

(VI) Contracts for the sale of goods, wares, or merchandise, above a value fixed by the statute (usually $50) unless a part or all of the goods are delivered, or a part or all of the purchase price is paid.

42. (I) Contracts Incapable of Being Performed in One Year.— A contract which may or may not be performed in one year is not embraced within the meaning of this clause; thus, a verbal contract to support a person for life would be valid, so far as the form of it is concerned, for the person might die within a year. But a contract to work for another for a period of two years, would, while remaining executory, be invalid, unless in writing, because it could by no possibility be performed within one year.

43. (II) Contracts to Answer for the Debt, Default, or Misdoings of Another.— It is a usual occurrence for one person to accompany another to a store, or other place of business, for the purpose of procuring credit for the latter person. In such cases, the tradesman should be especially vigilant as to the extent and expression of the obligation assumed by the person at whose instance he extends credit.

Illustration.— (a) Harrison accompanied Day to a coal yard and said to the proprietor: "Sell Day a ton of coal, and if he does not pay for it, I will." The dealer delivered the coal, and afterward demanded pay from Day, who failed to meet the obligation. He then called upon Harrison, who declined to pay the debt. Thereupon he sued Harrison, and the court properly held that Harrison was not liable for payment for the coal because Harrison's contract was a verbal promise to answer for the debt of another, and such promise was made void by the statute of frauds.

(b) If Harrison had said to the proprietor of the coal yard: "Deliver Day a ton of coal and I will pay for it," or, if he had said, "Deliver Day a ton of coal and charge it to me," or, if he had used like words, expressing an intention to bind his own credit primarily for the coal, the contract would have been sustained by the court, and Harrison would have been held for payment on the ground that the promise was not to answer for the debt of another, but was, instead, a promise to pay a debt of his own creation.

44. (III) Contracts Transferring an Interest in Real Estate.— A parol agreement is one which has not been reduced to writing. Negotiations for the purchase of real estate are often permitted to remain in parol. It very frequently occurs under such circumstances that a party to the agreement withdraws and declines to make or to receive conveyance of the land, as the case may be. The disappointed purchaser has no remedy. But, had he insisted on the agreement being reduced to writing, he might ordinarily compel the performance of the contract, or at least secure damages for its nonperformance.

Illustration.— Dean sold Howard a farm which was to be conveyed one week after the agreement was made, at which time the purchase price was to be paid. In the meantime the agreement remained in parol. At the end of the week, Dean, having been offered a larger price for the property, declined to make conveyance, and Howard brought suit to compel the transfer. The court held that Howard's verbal contract was void under the statute of frauds, and

that, notwithstanding he had tendered Dean the agreed purchase price, Howard was not entitled, under the law, to a conveyance of the land.

45. Payment of Earnest Money in Real Estate Transactions.— The payment of purchase money, or "earnest money," as it is often called, has no force in verbal real estate transactions. However, the money paid must be returned if the deed is refused.

46. Standing Timber is Real Estate. — Standing timber is regarded as real estate, and an executory contract for its purchase, to be binding, must be in writing.

Illustration.— Mitchell sold Burns the standing timber on forty acres of land. The sale was verbal and remained in parol. When Burns attempted to remove the timber, Mitchell ordered him to stop, and secured an injunction preventing its removal. Burns contested the injunction on the ground that he had a verbal contract, vesting title to the timber in him. The court properly sustained the injunction on the ground that the verbal contract for the sale of standing timber was void by the operation of the statute of frauds.

47. (IV) Contracts of an Executor or Administrator to Answer for Damages Out of His Own Estate.— Such a promise to be binding must not only be upon a sufficient consideration, but it must be in writing.

Illustration.— Wood was the administrator of the estate of Sheffields. At the time of his death

Sheffields was indebted to Olds. Wood promised Olds to pay Sheffields's debt out of his personal estate, provided the estate of Sheffields was not sufficient for that purpose. The promise was made verbally. Sheffields's estate was not sufficient to pay the debt, and Olds sued Wood on his verbal promise. The court properly held that the verbal promise of Wood as an administrator, to pay from his own estate the debt of Sheffields, was void by operation of the statute of frauds.

48. (V) Contracts in Consideration of Marriage.— Verbal promises to marry are valid. The violation of a verbal promise to marry will sustain an action for breach of promise. But promises made in consideration of marriage, aside from mutual promises to marry, must be in writing.

Illustration.— A man verbally promised a woman to give her $10,000 if she would marry him. After the marriage, the man declined to pay over the money. The woman brought action against her husband to compel payment, but the contract was held void under the statute of frauds.

49. (VI) Contracts for the Sale of Personal Property.— In most States, when personal property, exceeding a certain amount in value, is sold, but is neither delivered wholly nor in part, nor paid for wholly or in part, the contract is unenforcible, unless it is in writing.

Illustration.— Bliss bought goods exceeding $50 in value of Loveridge, of Detroit, Mich. The sale was verbal, and none of the goods were delivered

at the time of the agreement, nor was any portion of the purchase price paid. Loveridge afterward refused to ship Bliss the goods, and Bliss sued Loveridge for damages under the laws of the State of Michigan. The court properly held that Loveridge was not liable, basing this decision on the ground that the verbal contract for the purchase of goods exceeding in value $50, was void under the statute of frauds of the State of Michigan.

The statutes of the different States fix different limits above which contracts for the purchase of personal property, to be valid, must be in writing. On this point the student is referred to the laws of his own particular State. (See table in appendix.)

50. Letters as Written Contracts.— An order for goods made by mail, and accepted by mail, forms a written contract, and will be regarded as sufficient to suspend the operation of the statute of frauds in cases where the amount of goods ordered exceeds in value the statutory limit.

Illustration.— Ellis wrote Hill to send him certain goods. Hill replied by mail accepting the order. The amount of goods involved exceeded the statutory limit in value. Ellis failed to deliver the goods. Hill sued him for breach of contract and was successful in recovering a judgment. The order and acceptance were properly held to constitute a sufficient written contract.

51. The Contents of a Contract.— A contract required by the statute of frauds to be in writing should clearly indicate—

(a) The parties to it,

(b) The subject matter of the agreement,

(c) The consideration (as a matter of safety, although it is not always necessary).

(d) The signatures of the parties to be bound.

Illustration.— The following will give the student an idea of the general essentials and form of an executory contract for the sale of real estate :—

FORM OF CONTRACT.

This contract, made this 12th day of March, A. D. 1900, between William Webster, of the City of Detroit, County of Wayne, State of Michigan, as party of the first part, and Phillip Phelps, of the City of Chicago, County of Cook, State of Illinois, as party of the second part,

Witnesseth : that the said party of the first part, for, and in consideration of the sum of five thousand dollars ($5,000) to him to be paid, in the manner hereinafter mentioned, and in consideration of the mutual promises herein contained, does hereby sell, and, upon payment of the sum herein stipulated, at the time and in the manner herein provided, agrees to convey unto said party of the second part, by warranty deed, free from all incumbrances, the following land, situate in the City of Detroit, County of Wayne, State of Michigan, described as follows, to wit : —

All of lot number fifty (50), in block forty-five (45), in Woodward Addition to the City of Detroit, according to the record of plat of said Addition.

Said party of the second part hereby purchases the above described lands, and agrees to pay for same, said sum of five thousand dollars ($5,000), in the following manner : twenty-five hundred dollars,

($2,500) shall be paid within ten (10) days after the date hereof; the remaining sum of twenty-five hundred dollars ($2,500), shall be paid within twenty (20) days after the date hereof, at which time the deed above mentioned shall be delivered by said party of the first part to said party of the second part, conveying to said party of the second part, in fee simple, and free from all incumbrances, the lands hereinbefore described.

William Webster (L.S.)

Phillip Phelps (L.S.)

52. The Expression of the Contract.— The contract should be expressed in the clearest and most precise language. There should be no contradictions, and no clauses capable of a double construction. Words are cheaper than litigation. Sufficient words should be used to render the meaning of the contract unmistakable. While it is best to follow the customary forms, any words which clearly express the whole agreement will be sufficient.

53. Errors, Omissions and Discrepancies. —Defects in grammar or spelling, or omission of words or figures, not rendering the contract uncertain, will not impair the contract. If the meaning and intention of the parties can be gathered from the whole instrument, it will be sufficient. If the contract is partly in writing and partly printed, and discrepancies between the written and printed portions appear, the written portion will govern, and the conflicting portion of the contract will be ignored.

Illustration.— The above rule may be applied in the construction of the following promissory note :—

$250.00 Lansing, Mich., Jan. 10, 1900.

On or before.....year after date.....promise to pay to Lyman C. Gage, or bearer, One Hundred Fifty Dollars at the Lansing State Savings Bank, Lansing, Michigan.

Value received. This note is not to bear no interest. Amos Alexander.

It is readily gathered from the face of this note that Amos Alexander promises to pay $150 on or before one year after date to Lyman C. Gage, or bearer, at the Lansing State Savings Bank, of Lansing, Michigan, without interest. Such, in the absence of other evidence, would be the judicial construction of the contract.

54. The Construction of Contracts.— In all cases, courts will construe contracts, as far as possible, in such a manner as to give effect to the intent of the parties. If the construction has been agreed upon by the parties, it will be adopted by the courts. Words are given their common meaning, except where applied as technical terms. Words capable of a double construction will be construed most strongly against the person using them. Words will be interpreted in their generic, rather than in their specific, meaning. Thus, a contract whereby "all white oak" on certain lands was sold, was held to include all sweet oak, as sweet oak is a species of white oak, and hence is included in the generic term, "white oak."

55. A Contract "Properly Made."— We have said that a contract was an agreement *properly made*. A contract, to be properly made, must not

only be expressed in an appropriate manner, but it must be made at a *lawful time*. Many of the States have passed laws known as Sunday Laws, the purpose of which is to compel the observance of the first day of the week as a day of rest. The tenor and effect of these laws is not uniform. The following generalizations of the Sunday law are given for the purpose of affording the student an idea as to the usual statutes and decisions upon the subject. The student is cautioned, however, that for accurate information he must seek the latest legislative and judicial expression on the Sunday law in his own particular State.

56. Sunday Contract for Benevolent and Religious Purposes.— Contracts in the nature of charities or benevolence, or for the support of religious worship, made on Sunday, are generally sustained as valid.

> **Illustration.**— A subscription paper, signed by all the parties on Sunday, has been held binding, where the purpose of the subscription was the erection of a church for public worship.

57. Secular Contracts.— A secular contract made on Sunday is usually held void.

> **Illustration.**— Johnson sold and delivered to Howe on Sunday a herd of cattle, for which Howe made payment. It was held by the court that Howe, upon tendering back the cattle, was entitled to receive a return of his money. In other words, the contract was a nullity.

58. Negotiations Made on Sunday but Consummated on a Secular Day.—The fact that the terms of the contract are agreed upon on Sunday will not vitiate the contract if it is not actually made until a secular day.

Illustration.— Benham solicited Hart's insurance on Sunday, and Hart agreed that Benham might write for him a policy. The policy was dated, delivered, and paid for on Monday. Afterward Hart tendered back the policy and demanded his money, alleging as his reason that the contract was a Sunday contract, and therefore void. The court held that the contract was not impaired by reason of the negotiations leading up to it having occurred on Sunday, and that the contract having been consummated on Monday, was not a Sunday contract.

CHAPTER IV.

PERSONS COMPETENT AND PERSONS INCOMPETENT TO CONTRACT.

"Necessity defends what it compels."—*Legal Maxim.*

59. Who May Make Contracts.
60. The Capacity of the Parties.
61. Persons of Unsound Mind.
62. Lunatics in Lucid Intervals.
63. The Defense of Lunacy.
64. Contracts for Necessaries.
65. Infants.
66. Incompetency of Infants to Contract.
67. Ratification and Disaffirmance.
68. Retention of Goods after a Majority Is a Ratification.
69. Return of the Goods to Escape Payment.
70. Necessaries.
71. Notes Given by Infants for Necessaries.
72. False Representations of Age.
73. The Contracts of Married Women.
74. The Contracts of Unmarried Women.
75. Contracts for Necessaries.
76. Removal of Disability by Death of Husband.
77. Contracts with Enemies in Time of War.
78. Commercial Contracts with Enemies in Time of War.

59. Who May Make Contracts.—The law prohibits no one from entering into contracts. Certain persons, by reason of their want of capacity, or from

considerations of public policy, are relieved to a greater or less extent from the performance of contracts into which they have entered. Thus, it has been repeatedly held that the contract of a lunatic under guardianship is absolutely void; while the contract of an infant or of a person of unsound mind who is not under guardianship is generally only voidable. The contracts of a married woman are voidable under the common law, but this has been so changed by statutes in the several States that the contractual rights of married women can be safely determined only by reference to the statute of each particular jurisdiction.

60. The Capacity of the Parties.— The capacity of the parties is to be decided by the law of the place where the contract was made. It is a general rule that a contract good where made is good everywhere.

61. Persons of Unsound Mind.— Idiots, persons without mind from birth; lunatics, persons who have had mind and lost it, and intoxicated persons suffering from temporary loss of mental faculties, are relieved from performance of their contracts when it can be shown that at the time of the execution of the contract such person was laboring under such mental unsoundness that he did not know what he was doing.

> **Illustration.**— Samson, during a period of intoxication, executed to White a contract. Afterward Samson endeavored to escape performance of the contract on the ground that he was intoxicated,

On trial of a suit brought by Wood to recover damages for breach of the contract, Wood proved that Samson's condition at the time he executed the contract was such that he was fully conscious of all that took place, and that the negotiations were such as Samson fully comprehended and agreed to at the time the contract was consummated. It was properly held by the court that Samson was bound by his contract.

62. Lunatics in Lucid Intervals.— Lunatics not under guardianship may make valid contracts during lucid intervals.

Illustration.— Knight, who had previously been confined in an asylum for the insane, but who had recovered his reason, entered into a contract with Brown. Very shortly afterward, Knight again lost his reason, and was returned to the insane asylum where he remained until his death. Brown endeavored to hold the estate of Knight for the performance of the contract. The administrator of the estate resisted on the ground that Knight was a lunatic. Brown proved that at the time the contract was executed Knight was lucid and fully capable of understanding the full meaning of the transaction. The court properly held that Knight, and consequently the estate of Knight, was bound by the terms of the contract executed under such circumstances.

63. The Defense of Lunacy.— It is a general rule that courts will not permit the defense of lunacy to be used as means of fraud against those who have dealt with the lunatic fairly and not to his detriment.

Illustration.— Wiggins, a lunatic, purchased from Emerson, at a fair price, a house and lot, into which Wiggins immediately moved, making it his home. Some time afterward a guardian was appointed for Wiggins, and he tendered back to Emerson a deed of the premises, and endeavored to have the whole transaction set aside on the ground that Wiggins was a lunatic. The court found that no advantage had been taken by Emerson of Wiggins, and that the property was useful to Wiggins as a home, and thereupon the court held that the transaction was valid.

64. Contracts for Necessaries.— Persons of unsound mind are bound by their contracts for necessaries. This rule is made to prevent demented people from suffering the hardship that would attend the refusal of credit to them for the things that are necessary.

Illustration.— Jones purchased a suit of clothes from a dealer, and afterward refused to pay for it on the ground that, at the time the purchase was made, he was mentally deranged. He admitted that at the time the purchase was made, the clothing was necessary. The court properly held that the price of the clothes could be collected from Jones.

65. Infants.— It is a general rule that all persons under the age of twenty-one years are infants. To this rule an exception has been made, in a few States, by fixing the age of majority of women at eighteen years. A person becomes of age at the beginning of the day preceding his twenty-first birthday. For example: if Washington was born

on the 22d day of February, 1732, he attained his majority at the first moment of the morning of February 21, 1753. The reason for this rule is that the law takes no notice of parts of days.

66. Incompetency of Infants to Contract.— An infant is conclusively presumed to be incompetent to make valid contracts, except for necessaries. His contracts are, however, binding upon competent parties who contract with him.

Illustration.— Beecher, an adult, entered into partnership with Story, a minor. Story purchased goods in the name and on the credit of the firm. Before payment had been made, the firm failed, and Beecher sought to escape payment of the debts on the ground that the contract between him and Story was void by reason of the fact that Story was an infant and unable to make contracts. The court properly held that the contract of partnership was binding upon Beecher, although voidable as to Story, and that Beecher was bound by Story's acts as a partner.

67. Ratification and Disaffirmance.— The defense of infancy is personal to the infant. He may elect to take advantage of it or not, as he sees fit. His contracts are voidable. Upon arriving at his majority, he may affirm or disaffirm them. In general, no act is necessary to disaffirm a contract made in infancy. It is sufficient to insist upon the defense of infancy for the first time when suit is brought for the enforcement of the contract.

Illustration.— Marshall, a minor, bought goods (not necessaries) from Cooley, which he sold again

before reaching his majority. He never told Cooley that he would not pay for the goods, but, after coming of age, he made no new agreement to pay for them. Cooley sued Marshall for the purchase price of the goods. At the trial Marshall proved that the goods were purchased and disposed of during his minority, and that he had never, since coming of age, promised to pay for them. The court properly held that Marshall was not liable for the purchase price of the goods, and that Marshall's infancy at the time the contract was made was a complete bar to Cooley's action.

68. Retention of Goods after Majority is a Ratification.—If upon reaching his majority, Marshall (in the case last named) had still possessed and retained any of the goods he had purchased from Cooley, the retention of such goods would have been a ratification of the contract, and Marshall would have been held liable to pay for the goods retained. He might, however, have returned the goods, and thus escaped making payment for any of them.

In some States, by statute, ratification of a contract executed in infancy is not binding, unless made in writing.

69. Return of the Goods to Escape Payment.—To escape payment for personal property purchased during infancy, the infant should return the property, or dispose of it to others, before reaching majority, or should return it within a reasonable time after attaining his majority. What constitutes a reasonable time is in this case, as in others, to be

determined by the facts. A contract has been held ratified by retention of the goods for sixty days after the purchaser became of age.

Illustration.— Kirk, an infant, purchased a piano of Scott, on credit. Before arriving at his majority, he sold the piano to Waldo, and used the money. Upon arriving at his majority, Kirk refused to pay for the piano, and it was held that Scott was without a remedy.

If Kirk had retained the piano after arriving at his majority, the retention of it would have been a ratification of the contract made during his infancy, and Scott would have been entitled to recover from Kirk the price of the piano.

70. Necessaries.— An infant may make a valid contract for necessaries. Contracts for necessaries are regarded as being for the infant's own benefit, and for that reason are sustained.

What constitutes a necessary depends upon circumstances. What is necessary for one might be unnecessary for another. The wealth, age, social standing, and surroundings of the infant are to be taken into consideration. Thus, a suit of clothes costing $100 might be necessary to a wealthy infant engaged as an actor, while a suit costing even $50 might be unnecessary for a poor boy employed in a blacksmith shop. The rule is that the infant is personally liable for those things only that are *reasonably* necessary. When the reason fails, the rule fails. Thus, if an infant is provided by his parents with all that he needs, he can not bind his own

credit for additional goods on the ground that they are necessaries. And so, in the case of an infant under guardianship, if the guardian provides, or stands ready to provide, all that is reasonably necessary for the infant, the infant can not bind himself for goods on the ground that they are necessaries.

71. Notes Given by Infants for Necessaries.— An infant will be held liable on his promissory note given for necessaries. This rule has been extended even to notes given to procure money to enable the infant to purchase necessaries in cases where the money was actually used for that purpose. One who signs as surety for an infant to enable the infant to procure necessaries, may pay the obligation when it is due and may then recover from the infant the amount so paid.

72. False Representations of Age.— If an infant purchase goods by means of falsely representing himself to be of full age, he is liable in an action for his fraud, although he may not be liable on the contract. It is generally held that mere silence on the part of an infant will not give rise to an action against him for deceit by a person who has sold him goods believing him to be of full age. It is the duty of the vendor to inform himself of the competency of the purchaser.

Illustration.— Bliss sold a bill of goods to Yorke, not knowing that Yorke was an infant. The goods were not necessaries. Yorke afterward disaffirmed the contract on the ground that at the time it

was made he was an infant. At the time of the transaction, Yorke had made no representations in regard to his age. Bliss was properly advised by his attorney that, in the event of Yorke's refusal to pay for the goods, no action could be maintained against Yorke, either for deceit, or for the purchase price.

73. The Contracts of Married Women.— For many years the contracts of married women have been a source of perplexing legal questions. Under the old common law, her power to contract was wholly denied. With this condition as a beginning, her legal powers in this particular have been steadily broadened by favorable, but not uniform, legislation in the several States.

By the laws of most of the States, a married woman may now contract with relation to her *sole and separate* property, as though she were unmarried. However, in many States she can not become a surety except in cases where her separate estate is directly benefited by her contract of suretyship. By "separate estate" is meant the property which belongs to her solely, and not to her jointly with her husband. In Michigan, a married woman can not be a co-partner with her husband. Other equally absurd distinctions between the rights of married men and the rights of married women will be found to prevail in many of the States.

74. The Contracts of Unmarried Women. —There is no restriction upon the power of an unmarried woman to bind herself by her contracts.

75. Contracts for Necessaries.— A married woman living with her husband has authority to bind his credit for necessaries. This she can do by reason of her husband's obligation to support his family. A married woman may, however, pledge her own credit for necessaries, but such a contract must arise by express agreement, or from a course of dealing which amounts to an agreement, to charge her sole and separate estate.

Illustration.— (a) Sumner refused to furnish his wife with the necessaries of life. She purchased such necessaries upon his credit. He was held liable for payment for the goods purchased.

(b) A married woman managed a boarding house which she owned. Her husband boarded with her. She purchased of Lane, a grocer, goods which she used in her house. The business was conducted in her own name, although the profits were used for the support of her family, including her husband. She knew that the goods were charged to her personally, but made no objection. It was held that she had pledged her own credit for the goods, and that the contract of purchase related to her sole and separate estate, and did not bind the credit of her husband.

76. Removal of Disability by Death of Husband.— Upon the death of her husband, a married woman is restored *ipso facto* to her full power to contract.

77. Contracts with Enemies in Time of War.— Courts usually refuse to enforce contracts made with enemies in time of war. The tendency is

to confine the rule to such contracts as are inconsistent with the existing state of hostility.

Illustration.— (a) Belle chartered the ship belonging to Alden who was an alien. Before the voyage was commenced, hostilities broke out between the two countries. The contract between Belle and Alden was held dissolved.

(b) During the War of the Rebellion, a citizen of Massachusetts leased and took possession of lands in Mississippi. These lands he used for purposes not antagonistic to the Federal Government. He omitted, however, to pay his rent. In an action to recover the rent due, the Supreme Court of Massachusetts sustained the validity of the lease, although it was a contract made between enemies in time of war.

The line of demarcation between these illustrations seems to be, that, in the former case, the contract was inconsistent with the existing state of hostilities, while in the latter case such an inconsistency did not exist.

78. Commercial Contracts with Enemies in Time of War.— All commercial contracts which tend to increase the resources of the enemy, or to strengthen his resistance, are inconsistent with existing relations of hostility, and are held invalid.

Illustration.— During the war with Mexico, Hunt made a contract with Granger to furnish Granger with goods which were to be in turn sold by Granger to the Mexican Government. After a number of these goods had been delivered and used, Granger defaulted in payment. Hunt sued Granger in one of the courts of the United States,

and it was shown at the trial that the goods delivered by Hunt to Granger were resold with Hunt's knowledge to the enemy of the United States Government. It was held that the contract was void on the grounds of public policy. It is a general rule that courts will not enforce contracts which are against the interests of the government.

CHAPTER V.

CONSIDERATION.

"When the foundation fails, all fails."—*Legal Maxim.*

79. Consideration.
80. Something for Nothing.
81. Want of Consideration a Badge of Fraud.
82. Kinds of Consideration.
83. A Good Consideration.
84. A Valuable Consideration.
85. Courts Do Not Make Bargains.
86. Money as a Consideration.
87. A Failing Consideration.
88. An Illegal Consideration.
89. An Impossible Consideration.
90. A Past Consideration.
91. Exceptions to the Rule of Past Consideration.
92. Subscription Papers.
93. Promises To Do That Which One Is Legally Bound To Do.
94. Property Delivered and Retained.
95. Substituted Contract.
96. Statement of Consideration in Written Contracts.
97. Options for the Purchase of Property.

79. Consideration.— By consideration is meant the compensation or reward, the act or forbearance, which induces the contract. It is the cause of the contract. It is the foundation upon which contract stands.

Illustration.— If Phelps sells Hood a watch for $50, the watch is the consideration for Hood's agree-

ment to pay $50, and the $50 is the consideration for Phelps's agreement to sell and deliver the watch to Hood.

80. Something for Nothing.— Courts do not lend their aid to the enforcement of merely moral obligations, nor is it their intention to assist any person in obtaining something for nothing. Contracts not founded upon a sufficient consideration are unenforceable.

Illustration.— Howard said to Miller: "I will give you my horse gratuitously." Miller replied: "I will accept it." There was undoubtedly a moral obligation on the part of Howard to deliver the horse to Miller, but Miller could not compel such delivery, because the contract was wholly without consideration, and hence was unenforceable in law. For a like reason, Miller had no right of action against Howard, growing out of Howard's refusal to deliver the horse.

81. Want of Consideration a Badge of Fraud.— The want of consideration may be shown, for the purpose of impeaching the character of a contract, by third parties who have been injured by the gratuitous transaction.

Illustration.— King, while indebted to Loveridge and others in a large amount, conveyed all his property, without consideration, to Anderson, and then refused to pay Loveridge and his other creditors the amounts due them. Loveridge brought suit against King, and levied upon the property conveyed to Anderson. The court sustained the levy, and held that the conveyance to Anderson was void,

for the reason that it was without consideration, and operated as a fraud against Loveridge and King's other creditors.

82. Kinds of Consideration.— Consideration is either real or unreal. A Real Consideration is one which is sufficient to support a contract. It may be either —

(I) Good, or
(II) Valuable.

An unreal consideration is one which is not sufficient to support a contract. It may be either —

(III) Failing,
(IV) Illegal,
(V) Impossible, or
(VI) Past.

83. (I) A Good Consideration.— A Good Consideration, as distinguished from a Valuable Consideration, is one which consists in love, friendship, or natural affection. In the absence of fraud, a good consideration will support an *executed* contract. It will not support an *executory* contract in any case.

Illustration.— Lane, in consideration of his affection for his son, promised to deed his son a farm. The deed, however, was not immediately made, and afterward Lane declined to execute it. His son brought suit to enforce the execution of the conveyance. The court declined to enforce the executory contract on the ground that a good consideration was insufficient.

If the conveyance had been actually made, Lane would not have been permitted to recover the prop-

erty back from his son on the ground that the deed was void for want of consideration, as a good consideration is sufficient to support an *executed* contract.

In either case, the deed would have been void as to complaining creditors, for the courts hold that a man must be "just before he is generous," and no man can legally give away his property when such gift injures his creditors.

84. (II) A Valuable Consideration.— A Valuable Consideration is one that is capable of being measured, at least approximately, in money. It may consist in money, labor, property, or promises.

85. Courts Do Not Make Bargains.— In the absence of fraud, a court will not inquire into the adequacy of the consideration. It will leave the parties to their own bargain, so long as the consideration is something of value.

Illustration.— If, in the exchange of real estate, Ames gave Sumner one acre in consideration of one hundred acres, the court will not interfere, although Sumner's judgment may have been seriously at fault, and he may have been ruined by his want of discretion.

86. Money as a Consideration.— There is apparent exception to the foregoing rule. Where money is exchanged for money, and the value is fixed and certain, a grossly inadequate sum will not support a promise to pay a much greater sum. For example, it has been held that a consideration of one cent will not support a promise to pay $600.

87. (III) A Failing Consideration.—When the consideration is represented to be, and is apparently valuable, but turns out to be worthless, the contract may be repudiated by the injured party.

> **Illustration.**—Chester purchased from Wayne, on credit, a quantity of seeds which, when planted, failed to germinate. Wayne had represented the seeds to be "growing seed." Chester successfully defended a suit brought against him by Wayne for the recovery of the price of the seed by showing that the consideration had failed.

88. (IV) An Illegal Consideration.—Courts exist for the purpose of enforcing law. They decline to assist in the violation of law. It follows that a contract, the consideration of which is illegal, can not be enforced.

> **Illustration.**—May purchased from Key, on credit, a quantity of counterfeit money for which he afterward refused to pay. Key brought suit for the recovery of the purchase price. The court held the contract void on the ground that the consideration for the contract was illegal.

89. (V) An Impossible Consideration.—An Impossible Consideration is obviously a nullity. Hence a contract based upon such consideration must fail.

> **Illustration.**—Marshall agreed with Coy to locate for Coy a mine by the use of magic. Marshall failed in the undertaking, and Coy sued him for damages. The court held that the contract was void on the ground of impossibility.

90. (VI) A Past Consideration.— A Past Consideration which was merely voluntary will not generally support a subsequent promise.

Illustration.— White purchased from Rood a tract of land which Rood had previously improved. After conveyance of the lands had been made, White promised Rood to pay for the improvements. It was held that the consideration was past, and hence, that it was insufficient to support the agreement. White was already the owner of the improvements by virtue of his conveyance from Rood, and while the value of the lands he had purchased had been enhanced by the improvements made, it was to be presumed that the increased value had been added to the purchase price. White had received nothing additional from Rood, and consequently there was nothing for which he could be legally held liable to pay.

91. Exceptions to the Rule of Past Consideration.— If the Past Consideration was given at the request of the promissor, it will support a present promise.

Illustration.— Markham purchased from Waite a farm. After the purchase, but before conveyance, Markham requested Waite to make certain improvements upon the premises. After the conveyance was made, Markham promised to pay Waite the value of the improvements made. It was held that the past consideration, given at the request of the promissor, was sufficient to support the promise to pay, and Markham was held liable.

92. Subscription Papers. — Voluntary mutual subscriptions made gratuitously for a common

object are sustained on the ground that the promises to pay are mutual, and operate as a consideration each for the others.

Illustration. — Ferris, Fry, and Standiford signed a subscription paper which read as follows: "We, the subscribers hereof, for the purpose of raising money to be used as a fund for the purchase of books for a public library in the village of Bristol, Tenn., do hereby agree upon demand to pay to the proper officers of the library association, the sums set opposite our respective names." Ferris declined to pay on the ground that he had received no consideration for the promise. The court upheld the subscription and declared Ferris liable for payment of the amount subscribed.

93. Promises To Do That Which One Is Legally Bound To Do.— A promise to perform that which one is already bound to perform has no consideration, and will not support a contract.

Illustration.— Willis having previously contracted to build a house for Link for $5,000, discovered that the house would cost $8,000, and said to Link: "I can not finish the house unless you will increase my compensation sufficiently to cover the cost of construction." Link replied: "I will give you $3,000 additional if you will finish the house according to the terms of the contract you have made." Willis completed the house, and demanded the additional consideration. Link refused to pay it for the reason that Willis had done nothing more than he was originally bound to do. He produced evidence to show that Willis had merely completed the house according to the terms of his original con-

tract, and that the $3,000 was promised merely to induce Willis to perform that which he had already agreed to perform. The court sustained Link's position, and held that Willis was entitled to recover $5,000 only, and that the promise to pay the additional sum of $3,000 was without consideration, and void.

94. Property Delivered and Retained.— If property is delivered and received in the partial performance of a contract, the retention and use of the property gives rise to an implied promise to pay for it such price as it is reasonably worth, not exceeding the agreed price. The property retained forms a consideration for the implied promise to pay what such property is reasonably worth.

Illustration.— Burroughs ordered from Clarke ten barrels of apples, five of which Clarke delivered and Burroughs used. It was held that Burroughs must pay Clarke what the five barrels of apples were reasonably worth. But, although the market price had advanced 25%, it was held that Clarke could not recover an amount to exceed the price named in the order under which the apples were delivered.

95. Substituted Contract.— When the parties to a contract voluntarily abandon it, and agree upon a new contract which is substituted in the abandoned contract's stead, the new contract will be sustained according to its terms.

Illustration.— Mains contracted with Worth to furnish Worth ice at $1.75 per ton. Afterward Mains refused to furnish more ice unless paid $5.00 per ton. After some negotiation, a new contract,

embodying terms differing from those of the old one, was made at $3.50 per ton. The new contract, as such, was sustained.

96. Statement of Consideration in Written Contracts. — As a matter of accuracy, convenience, and caution, it is usually best to state the consideration in all written contracts. The result of failure so to do varies with the laws of the several States. For example, in Alabama, Minnesota, Oregon, and Nevada, it is provided by statute that a contract required by the statute of frauds to be in writing, must state the consideration; while in Indiana, Illinois, Maine, Mississippi, Michigan, Nebraska, Kentucky, and Virginia, it is provided that the consideration need not be expressed.

97. Options for the Purchase of Property. —An option for the purchase of property means the right to accept or reject an offer of sale within a given time. It is a common practice to give an option on property to a prospective purchaser. If gratuitous, these options are void. An option, like any other contract, to be valid, must be supported by a sufficient consideration.

Illustration. — Wood offered Hall a certain piece of property at a given price, saying: "I will give you an option on this property for ten days." Hall accepted the offer and agreed to advise Wood of his decision within that time. Wood immediately sold the property to Blair. Within the time limited in the option, Hall concluded to accept Wood's proposition and communicated his acceptance to Wood. Upon finding that the property had been

already sold to Blair, Hall sued Wood for breach of contract. It was held that the option given by Wood to Hall was void because it was based upon no consideration.

The safe course would have been for Hall to have paid Wood something of value (for example $1.00) for the option, and to have reduced the agreement to writing, signed by Wood. In that event, he could have held Wood to the performance of his contract, or could have held him liable for the breach of his contract.

CHAPTER VI.

LEGALITY OF OBJECT.

"Private rights yield to public good."— *Legal Maxim.*

98. A Contract Must Be for a Lawful Object.
99. Contracts in Restraint of Trade,.
100. Contracts Restraining Trade Generally.
101. Contracts for the Purpose of Stifling Competition.
102. Lobbying Contracts.
103. Gambling Contracts.
104. Election Bets.
105. Wagers.
106. Liability of the Stakeholder.
107. The Statutory Liability of Stakeholders.
108. Puts and Calls.
109. Futures.
110. Contracts To Furnish Property Not in the Hands of the Seller at the Time of the Sale.
111. Marriage Brokerage Contracts.
112. Usurious Contracts.
113. Legal Rate.
114. Contract Rate.
115. The Law of Place Applied to Usury.
116. A Wise Precaution.
117. Evasion of Usury Laws.
118. The Effect of Payment of Usurious Interest.
119. The Payment of Bonus.
120. Contracts for Immoral Purposes.

98. A Contract Must Be for a Lawful Object.— No contract to do a thing prohibited by law or to refrain from doing a thing commanded by

law, is valid. Anything that is contrary to public policy, morality, health, or the welfare of the public in general, is treated as unlawful. On this principle courts refuse to enforce —

(I) Contracts in restraint of trade,
(II) Contracts for the purpose of stifling competition,
(III) Lobbying contracts,
(IV) Gambling contracts,
(V) Marriage brokerage contracts,
(VI) Usurious contracts,
(VII) Contracts for immoral purposes.

99. Contracts in Restraint of Trade.— (I) A contract which operates to unreasonably restrain trade is voidable at the option of the party restrained. Just what is reasonable or unreasonable as a restraint, must be determined from the nature of the contract itself, viewed in the light of the interests of the general public. Usually a contract for the restraint of a particular business in a particular locality is sustained.

Illustration.— Barth owned a publishing business which he sold to Phillips, at the same time agreeing not to re-engage in publishing in the city in which the business sold, was located. Afterward Barth violated his contract by engaging again in the same business in the same city. Phillips brought suit, and the court sustained the contract as being "not an unreasonable restraint of trade," and enjoined Barth from further violation.

100. Contracts Restraining Trade Generally.— Contracts wherein parties agree never to re-

engage in a certain business, at any time or place, are generally held void. The theory is that the public is entitled to the judicious exercise of the best abilities of all its members. It is also entitled to the reasonable results of fair competition. Courts scrutinize a contract restraining trade very critically, and if the restraint is unreasonable, it will be held void.

Illustration.— Lewis purchased a competitive manufacturing business from Hart, and secured from Hart an agreement not to carry on a like business in any of the eight States named in the contract. The purpose of Lewis was to discontinue Hart's business, thus cutting off competition. Hart, afterward, re-engaged in the business, and Lewis sought to enjoin him. The court, however, refused to restrain Hart for the reason that the contract was an unreasonable restraint of trade, and was void.

101. (II) Contracts for the Purpose of Stifling Competition.— A combination to prevent competition, or to inflate prices, is, under the laws of most States, illegal and void.

Illustration.— (a) All grocers in the town of Troy agreed to discontinue dealing in butter, if another firm should establish a store there, and pay as much for butter as dealers in neighboring towns were paying. The agreement was held void.

(b) The stenographers of the city of Chicago formed a combination for the purpose of preventing competition. The agreement was held void.

102. (III) Lobbying Contracts.—It is the policy of the law to protect the representatives of

the people in the free exercise of their legislative discretion. Contracts, the purpose of which is to influence legislation, are void. Such contracts are usually called Lobbying Contracts.

Illustration.— Smith agreed with Jones, for a certain consideration, to exert his influence with the members of the State Legislature to procure the passage of an act in which Jones was interested. Smith performed the service and demanded his pay, which was refused. He then sued Jones for his compensation, but the court refused to enforce the contract, holding that such an agreement was contrary to public policy, and was void.

103. (IV) Gambling Contracts.— A gambling contract is one which is of a speculative nature, depending for the manner of its performance upon the happening of some uncertain event. Courts will not generally enforce contracts of this character.

(a) Election bets, and

(b) Gaming and other wagers, and

(c) Contracts for "futures" fall within this class.

104. (a) Election Bets. — Election bets are usually prohibited by statute, but, in the absence of any statute, they meet with no favor at the hands of the court.

Illustration.— If Bryan gave Mc Kinley his note in settlement of an election bet, the note could not be collected by Mc Kinley in a court of law, but, in the absence of statutory provisions, the note

could be collected by one who purchased it from Mc Kinley before its maturity and without notice of its illegal origin.

In such States as have made betting a crime, a note given directly and wholly in payment of a bet, would be void, even in the hands of an innocent purchaser.

105. (b) Wagers.—What has been said of election bets applies with equal force to other wagers and gaming bets. The courts are very strict in the enforcement of disadvantages and penalties applicable to wagering contracts.

106. Liability of the Stakeholder.—If the loser of the money deposited with the stakeholder, upon an unlawful wager, demands the return of his money before it has been actually paid over by the stakeholder to the winner, the stakeholder is bound to return it.

If either party to the bet demands his money from the stakeholder before the wager has been decided, the stakeholder is bound to return such money to the party demanding it.

Illustration.—Scrubb laid a wager with Wagner and deposited the stakes with Just. Before the wager had been decided, Scrubb demanded his money back from Just. It was held that Just was bound to return the money deposited with him by Scrubb. The rule would have been the same if the wager had been decided against Scrubb before he demanded the return of his money.

107. The Statutory Liability of Stakeholders.—By statute, in some States, the loser can

compel the stakeholder to restore him the amount of his deposit, although it has been already paid to the winner in good faith, and without the loser's objection.

It will be observed that the liabilities of the stakeholder are such that it is usually wise to refuse a trust of this character.

108. Puts and Calls. — A Put is defined to be the privilege of delivering, or not delivering, property which has been sold. A Call is defined to be the privilege of calling for, or not calling for, property bought. The purpose of sales of this kind is speculation, based upon the fluctuation of market prices. Puts and Calls are regarded as gambling transactions, and are unenforceable.

109. (c) **Futures.** — An executory contract of sale, for *future delivery*, in which no actual property is to change hands, it being understood that the purchaser is to pay or receive the difference between the agreed purchase price and the market price at the date of delivery, is a gambling contract, and can not be enforced.

Illustration. — Howard bought 10,000 bushels of wheat from Hay, in April, to be delivered in July. It was understood that no wheat was to change hands, but the difference between the April price and July price was to be settled in cash. Wheat advanced 2¢ per bushel. Howard refused to pay Hay the amount of the difference. In an action to enforce payment, Hay was defeated on the ground that the contract for "futures" was a gambling contract.

110. Contracts To Furnish Property Not in the Hands of the Seller at the Time of Sale. — It should be understood here, that contracts to furnish goods or other property not in the possession of, or owned by, the seller at the time of sale, *when actual delivery of the property is intended*, are valid.

> **Illustration.**— Anthony sold Thornton 10,000 bushels of wheat for delivery at Thornton's mill at a time specified. Anthony did not own the wheat, but the intention of the parties was that he should purchase it and deliver it for the use of Thornton. Anthony failed to deliver the wheat, and Thornton was held entitled to recover from him the amount of the damages he had sustained. The contract was perfectly valid.

111. (V) Marriage Brokerage Contracts.— Courts always endeavor to preserve the sacredness of the marriage relation. That marriage may not be debased to the level of a mere business transaction, courts refuse to enforce marriage brokerage contracts.

> **Illustration.**— Winter promised payment of $500 to Bond in consideration of Bond procuring for Winter a wife. Bond successfully performed the undertaking, and after the marriage sued Winter for the promised compensation. The court held the contract void, and Bond failed to recover any compensation whatever.

112. (VI) Usurious Contracts.— Usury consists in contracting to receive interest at a rate exceeding the limit fixed by law. Each State has its own

particular laws relating to usurious contracts. The punishment of usury varies in the several States.

113. Legal Rate.— The Legal Rate refers to a rate attached by operation of law to interest-bearing obligations in which the parties have not specified a rate, or where the rate specified is the lowest rate fixed by law.

> **Illustration.**— In a State where the legal rate is six per cent, a note in which the interest clause is merely the expression "with interest," bears interest at the "legal rate," i. e., at six per cent.

114. Contract Rate.— The Contract Rate refers to any lawful rate of interest exceeding the legal rate.

> **Illustration.**— In a State in which the legal rate is six per cent, and the contract rate is limited at eight per cent, any amount fixed by the contract exceeding six per cent, and not exceeding eight per cent, would be called the "contract rate." Any amount exceeding eight per cent in such State would be a usurious rate.

115. The Law of Place Applied to Usury.— A contract to be performed at the place where made, will be governed by the usury law of that place. However, a more difficult question arises when a contract made at one place is to be performed at another place. This question has been a fruitful source of litigation. The rule is stated by the Supreme Court of the United States, as follows: "When the rate of

interest at the place of contract differs from the rate at the place of payment, the parties may contract for either rate, and the contract will govern."

Illustration.— A note given in Louisiana, bearing interest at ten per cent (which was lawful in that State), and payable in New York, where the limit was seven per cent, was held valid.

116. A Wise Precaution.— It is always advisable to make notes or other interest-bearing contracts expressly payable in the State whose rate of interest is used. Thus, if a contract payable in Massachusetts were made in New York, bearing interest at ten per cent, it should clearly state that the contract is payable in Massachusetts.

117. Evasion of Usury Laws.— Courts use every means at their command to prevent the evasion of usury laws, and when, in any case, it is proved that the wording of the contract, or anything contained therein, is intended to evade these laws, the court will disregard the words and acts of the parties, so far as they are fraudulent, and will view the contract in its true light, and will apply to it the penalties of usury, when it is in fact usurious.

Illustration.— A note which was intended to be paid in New York was written payable in Massachusetts for the purpose of evading the rigorous usury laws of the former State. The note was treated as a New York note, and, being void for usury under the laws of New York then in force, was held void by the courts of Massachusetts.

118. The Effect of Payment of Usurious Interest.— (a) As a general rule, while a contract remains executory, one who has paid illegal interest may have such interest applied as payment on the principal.

Illustration.— Walker borrowed $400 of Whitcomb at usurious interest. After paying interest to the amount of $265, Walker was sued by Whitcomb for the $400, the principal which was due and unpaid. The court credited $265 usurious interest as payment upon the principal, and rendered judgment against Walker for $135 only. This was done under the laws of a State which provided for the forfeiture of all interest under usurious contracts.

(b) It is deemed useful to call attention to the fact that in many States, after a usurious contract has been *fully executed*, one who has voluntarily paid usurious interest can not recover it back. Such is the law in Michigan. Texas holds the contrary doctrine, maintaining that one who has paid usurious interest may recover it back, even though the contract has been fully performed, and this in the absence of any statutory provision to that effect. The laws of the different States differ in their attitude toward this subject.

119. The Payment of a Bonus.— It is common for persons who are in great need of money to pay a bonus for a loan. If this bonus is received by the lender, or by the lender's agent, with the knowledge and assent of the lender, and if the bonus, added to the interest reserved, exceeds the legal rate of interest, the transaction is usurious, and will be so treated by the courts.

Illustration.— Simons instructed his agent Clay to make loans for him at the highest legal rate, it being agreed that Clay was to receive his compensation from the borrower by way of bonuses in addition to the interest reserved. Clay negotiated a loan on this basis to one Barker. At maturity, Barker declined to pay the loan, contending that the interest reserved, added to the bonus paid, rendered the whole transaction usurious. The courts sustained Barker's contention.

120. (VII) Contracts for Immoral Purposes. — The courts will not sustain a contract in furtherance of an immoral purpose. Thus, a lease of property to be used as a resort for gamblers, in a city under the laws of which gambling is prohibited, would be void.

CHAPTER VII.

TERMINATION OF CONTRACT.

"Words are indications of intention."— *Legal Maxim.*

121. Methods by Which a Contract May Be Terminated.
122. Performance.
123. By What Law Is a Contract Governed?
124. A Contract, Valid Where Made, May Not Be Valid Everywhere.
125. The Law of Place, as Applied to Movables and Immovables.
126. At What Place Is the Contract Deemed Made?
127. The Law of Place Applied to Commercial Paper.
128. Performance by Payment.
129. The Meaning of "Tender" and "Legal Tender."
130. The Kind of Money in Which a Valid Tender May Be Made.
131. Kinds of Money Which Are Not Legal Tender.
132. An Agreement To Accept Something Other than Legal Tender.
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134. The Tender Must Be Unconditional To Be Valid.
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141. To and by Whom Tender May Be Made.

142. Practical Suggestions Relative to Making a Tender.
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169. Renewal of Debt by Part Payment.
170. Renewal of Debt by New Promise.
171. Renewal of Debt by Payment of Interest.
172. Renewal of Joint Obligations.
173. Indorsement of Unpaid Interest.

121. Methods by Which a Contract May Be Terminated.— A contract once made may be terminated by—

(I) Performance,
(II) Substituted contract.
(III) Merger,
(IV) Alteration,
(V) Bankruptcy,
(VI) Impossibility of performance,
(VII) Breach,
(VIII) Limitation.

122. (I) Performance.— It is obvious that the sure and contemplated method of discharging a contract is by performing the thing that has been agreed upon, but just *what* has been agreed upon often becomes a matter of great difference. What law governs the contract? What was to constitute performance? How may one be released from the obligations he has assumed when the other party refuses to accept performance? These questions are all of weighty importance, and require detailed discussion.

123. By What Law Is a Contract Governed? — It is a general rule that the law of the place where the contract was made determines the right created, while the law of the place where the contract is sought to be enforced, determines the remedy.

Illustration.— Wood and Miles entered into a contract in Illinois. Afterward Miles removed to England. Wood followed him, and brought suit in an English court, for the enforcement of the con-

tract. The validity of the contract was determined according to the laws of Illinois, but the method of enforcing the remedy was determined by the laws of England. One who submits his case to the decision of a court of any particular country must submit to all the inconveniences and delays, both before and after judgment, peculiar to the jurisdiction in which the suit is brought.

124. A Contract, Valid Where Made, May Not Be Valid Everywhere.— We have learned that a contract, valid where made, is usually valid in every other place. To this rule, there is an exception. A contract, though valid where made, will not be enforced in another jurisdiction where like contracts are forbidden by law, or are held immoral, or are deemed in contravention to public policy.

Illustration.— Wright and Corey entered into a contract in Arizona under the laws of which State the contract was valid. Suit was brought upon the contract in Wisconsin, under whose laws like contracts were declared void. The court of Wisconsin declined to hold the Arizona contract valid, notwithstanding the fact that it was valid at the place where it was made.

125. The Law of Place, as Applied to Movables and Immovables.— It is a general rule that contracts relating to movables are construed according to the law of the place where made, while contracts relating to immovables are construed according to the law of the place where the immovable property is situate.

Illustration.— Wilson bought mortgages of Ryan in New York City. The contract was construed according to the laws of New York. If Wilson had entered into a valid contract in New York for the purchase of lands belonging to Ryan, situate in Indiana, the contract would have been construed according to the laws of Indiana.

126. At What Place Is the Contract Deemed Made? — When a contract is executed partly in one place, and partly in another, the place of the last act is the place whose law governs.

Illustration.— Under an Illinois statute making illegal an option to buy a commodity at a future time, an order from Iowa *accepted in Illinois*, requesting shipment of 150 cars of coal with the privilege of 250 cars more was held to be an Illinois contract and was declared illegal.

127. The Law of Place Applied to Commercial Paper.— Bills and notes drawn in one State for the purpose of being negotiated in another, are governed by the law of the State where they are negotiated.

Illustration.— A New York firm drew a draft which was to be negotiated in Chicago. Although the paper would have been void for usury had it been regarded as a New York contract, it was sustained on the ground that it was an Illinois contract.

128. Performance by Payment.— As was recently said by a member of the supreme court of Georgia: "The best thing to do with a debt is to

pay it." Payment may be made in any lawful thing which the obligee will accept as payment. The obligee in a contract for the payment of money is not bound to accept anything other than legal tender.

129. The Meaning of "Tender" and "Legal Tender."— The offer of specific performance of a contract is called "tender." Any kind of money, the proffer of which constitutes a valid tender is called "legal tender."

130. The Kind of Money in Which a Valid Tender May Be Made.— A valid tender to any amount may be made in United States gold coin, silver dollars, treasury notes, or greenbacks. Silver half dollars are legal tender in any amount not exceeding $10. Silver in denominations less than half a dollar is legal tender to an amount not exceeding $5. Nickel and bronze coins are legal tender in amounts not exceeding twenty-five cents.

131. Kinds of Money Which Are Not Legal Tender.— Gold certificates, silver certificates, and bills issued by national banks of the United States, as well as all foreign money, are not legal tender, and, if offered in payment of a debt, may be refused.

132. An Agreement To Accept Something Other than Legal Tender Is Valid.— If the contract itself provides that it may be discharged by payment in something other than legal tender, the tender of the thing contemplated by the contract will be valid. In such case the maxim that "the contract makes the law," is applied. Thus, checks, drafts, and certificates of deposit, while not legal ten-

der, are a sufficient tender in cases where their sufficiency is provided by the terms of the contract.

Illustration.— Billings executed a contract to Stevens wherein he agreed to pay Stevens for certain services, in wheat at the regular market price. Billings tendered Stevens the correct amount of wheat, and Stevens refused to accept it on the ground that it was not a legal tender. The court sustained the sufficiency of Billings's tender, and applied the usual rule, that while the tender did not discharge the debt, it exempted Billings from payment of any interest or costs accruing subsequent to the date when the tender was made.

133. Incomplete Tender.—A tender is not complete without the visible production of the thing due. The amount tendered must be the exact amount due. A tender of more than his due is not sufficient. The obligee is not bound to make change. It is a general rule that if the tender be in money, the obligee must be given an opportunity to count it.

Illustration.— Reed, being indebted to Wood, said: "I have the money in my pocket to pay you." Wood made no reply. It was held that no tender had been made.

134. The Tender Must Be Unconditional To Be Valid.— A tender must be more than a mere offer of compromise. It must be a tender of the full and exact amount of the thing due, unconditionally.

Illustration.— Harris owed Hopkins $150. He admitted that he owed $100, and denied the remainder of the obligation. He offered, however, to

"split the difference," and tendered Hopkins $125. It was held that this did not constitute a valid tender.

135. Time and Place of Tender.— A tender, to be good, must be made at a reasonable time and a proper place. Tender at midnight, on a dangerous street, of a large amount of money, would be obviously unreasonable in time, improper in place, and, consequently, invalid in law.

If the place of tender is named in the contract, tender should be made at that place. If no place is named, it is the duty of the debtor to make the tender at any proper place where the creditor is found. The tender should be made during usual business hours, and after the obligation has fallen due. A tender made before a debt is due is not valid.

136. Objections to Tender Should Be Stated.— It is sometimes necessary, and always advisable and prudent, for one who refuses a tender, to state the reason for so doing. Thus, if too great an amount, or a correct amount of an improper kind of money is tendered, the obligee, upon refusing it, should state his reason. His failure so to do is often construed by the courts as a waiver of the objection.

Illustration.— Ralls tendered Williams national bank notes, which Williams refused. Williams did not at the time state any objection to the character of the money tendered, but refused to accept the tender for another reason. It was held that the objection that the money was not legal tender was waived by Williams, because that objection was not stated,

and the objection he had stated having proved insufficient, it was held that the tender must be sustained as valid.

137. The Effect of Tender.— Tender does not extinguish the debt. It operates to suspend the accumulation of further interest and costs.

Illustration.— Bryce sued Wilkins for the recovery of $100. Wilkins tendered Bryce $100 together with $5, the total costs accrued at the date of the tender. Bryce refused the tender, and continued prosecution of the suit. Costs to the amount of $25 accumulated. It was held by the court that Wilkins's tender being found correct, Bryce's recovery was limited to the amount tendered, and that he was not entitled to recover any costs that had accrued subsequent to the date of the tender.

138. The Tender Must Continue.—After a tender has been made, it must be kept open for the acceptance of the obligee. If the obligor subsequently refuses to perform his contract, it nullifies the effect of his previous tender.

Illustration.— Johnson owed Hart $10, payment of which he tendered. Hart declined to accept the money, but afterward changed his mind, and asked Johnson for the payment. Johnson declined to pay, and it was held that this refusal nullified the effect of the previous tender.

139. The Effect of Tender on Mortgage and Other Liens.— The unaccepted tender of the sum due upon a real estate mortgage, or upon a chattel mortgage, or upon any other lien, does not pay debt, *but it discharges the lien.*

Illustration.— Robinson held a mortgage on Rogers's farm. At the date of maturity of the obligation, Rogers tendered Robinson the amount due. Robinson refused it, and, hoping to obtain the farm, commenced foreclosure proceedings. It was h ld that the mortgage lien had been discharged by the tender of the amount due, and that the foreclosure could not be maintained.

140. The Effect of Tender as an Admission of Indebtedness.— A tender is an admission that there is an existing indebtedness due from the person making the tender to the person to whom the tender is made equal in amount to the amount of the tender.

Illustration.— Bliss tendered Grant $40 in payment of a debt. Grant declined to receive the amount, and sued Bliss for a greater sum. At the trial Bliss contended that he owed Grant $25 only. It was held by the court that proof of a voluntary tender of $40 was proof of an existing indebtedness at the time of the tender to that amount.

141. To and by Whom Tender May Be Made.— Tender may be made to the obligee personally, or to anyone authorized to settle the matter in the obligee's behalf. Thus, a tender to an attorney having authority to collect a claim, would be valid.

Tender may be made by the obligor through his agent. Tender of payment of a partnership debt may be made by any member of the firm. Tender of payment of a debt due a partnership may be made to any member of the firm.

142. Practical Suggestions Relative to Making a Tender.— A tender should not only be made in legal tender money offered unconditionally, but it should be rendered capable of ready proof by being made in the presence of one or more witnesses who have previously informed themselves of the legal tender character of the amount of the money tendered, and who are capable of fully understanding and minutely remembering the details of what occurs. To be able *to prove* a tender is as important as to have made it.

143. (II) Substituted Contract.— A contract may be discharged by the substitution of another contract in its stead. Advantage of this is sometimes taken by unscrupulous persons for the purpose of terminating unsatisfactory contracts.

Illustrations.— Lane hired Howe as a watchmaker to work at a stated salary for the period of one year. Afterward, Lane discovered that he could procure Willis to perform the same work at a less price. Wishing to terminate his contract with Howe, Lane, on pay-day, drew a check for a greater amount than was named in the contract with Howe, and upon presenting it to Howe, said: "You are worth more than we agreed to pay you. We wish to do what is right about the matter. Let us enter into a new agreement whereby we are to pay you a larger salary, and you are to work fewer hours daily." To this, Howe, somewhat flattered, gladly assented. It will be observed that the new contract amounted to a contract, not for a year, but from day to day only. In a few days Lane informed Howe that his services were no longer required, and thus Howe, having per-

mitted an indefinite contract to be substituted for his annual contract, found himself effectually discharged.

144. (III) Merger.— When, by the shifting of obligations, the person who is bound to perform an act becomes, as well, the person entitled to receive performance, the obligation to be performed is said to be extinguished by merger.

Illustration.— (a) Jackson gave Wiseheart a note which Wiseheart then sold to Bower. Jackson bought the note from Bower before it was due and did not re-issue it. The note was extinguished by merger.

(b) Wilson, being the sole heir of Walters, owed Walters a sum of money secured by mortgage. Walters died without debts, and Wilson inherited his own obligation. The mortgage lien was destroyed by merger. No further form of discharge was necessary.

(c) Atkins purchased lands on which he held a mortgage. The mortgage was destroyed by merger. No further form of discharge was necessary.

145. Alteration. (IV).— The material alteration of a legal instrument renders it voidable.

Illustration.— Riley gave Wharton his note, bearing interest at 6%. Wharton fraudulently altered the interest to read 8%, by changing the figure "6" to the figure "8." He then sold the note to Clinton, who had no knowledge of the alteration. The alteration was held to render the note a nullity, even in the hands of Clinton, an innocent purchaser.

146. (V) Bankruptcy.— Bankruptcy, strictly speaking, is the state of being legally a bankrupt.

A legal bankrupt is one who has been declared by a competent court to be unable to pay his debts.

147. The National Bankruptcy Law.— In 1898, Congress passed an act, "to establish a uniform system of bankruptcy throughout the United States." This act supersedes all State insolvency laws with which it is in conflict.

148. The Purpose of the National Bankruptcy Law.— This law is designed, first, to relieve insolvent debtors, and, second, to protect creditors. It relieves insolvent debtors by making it possible for them to be discharged from payment of their debts by distributing their property legally and proportionately, without preference, among their creditors. It permits the debtor to retain such property as is exempt from levy and sale on execution under the State exemption laws. Thus, one who has failed in business may settle his debts by paying to his creditors the proceeds of his unexempt estate, and may then re-engage in business, unembarrassed by what would otherwise be a ruinous burden of debt.

This law protects creditors by making it possible for them to secure a distribution of the property of an insolvent debtor fairly, whereas, he might otherwise extend preferences to his friends, to the detriment of other of his creditors.

Illustration.— (a) Franklin owed Ross, White, and Lay, $10,000. Franklin's available assets amounted to only $1,000. He was clearly insolvent, and desired to have an opportunity to commence business over again, unhampered by the $9,000 of

indebtedness that he could not pay. He filed a petition in bankruptcy, and placed his property in the hands of the trustee appointed by the court. This property the trustee reduced to cash and distributed among Ross, White, and Lay, pro rata the amount of their claims. While it is clear that the creditors received only ten cents for every dollar owed them by Franklin, under the operation of the national bankruptcy law the court declared Franklin discharged from further payment to the same extent as though he had paid the obligations in full.

(b) As an illustration of the operation of the national bankruptcy law for the protection of creditors, we cite the following: Lane being indebted to Cole, Dane, Earle, and Foster, in a sum aggregating more than $1,000, gave Cole a mortgage covering his entire estate to secure the amount owed Cole. It is clear that this preference given to Cole was a detriment to Dane, Earle, and Foster, for if the mortgage had been enforced, all they could have received from Lane's estate would have been such property as was left after Cole's claim had been paid in full. Under the national bankruptcy law, Dane, Earle, and Foster, or any of them, might petition to have Lane thrown into involuntary bankruptcy, in which case the mortgage would be disregarded, and the estate would be distributed among Cole, Dane, Earle, and Foster, without preference, and pro rata the amount of their respective claims.

149. Kinds of Bankruptcy.— Bankruptcy is of two kinds, voluntary and involuntary. Voluntary bankruptcy is that which is adjudged upon the bankrupt's own request. Involuntary Bankruptcy is that which is adjudged upon the request of a creditor of the bankrupt.

150. Who May Be Asked to Be Declared a Bankrupt? — The law provides that "any person, except a corporation, may be declared a voluntary bankrupt." An insolvent corporation may usually become a bankrupt by the request of its creditors, that is, it may go into involuntary bankruptcy, but it can not go into bankruptcy at its own request.

151. Who May Be Thrown into Involuntary Bankruptcy? — Generally speaking, when the pre-requisite conditions exist, any natural person, other than a wage earner receiving less than $1,500 per year, and any unincorporated company, and every printing, publishing, or mercantile corporation, or statutory limited co-partnership, or joint stock company, and all private banks, when such person, company, corporation, partnership, or bank, shall owe debts to the amount of $1,000, or more, may be forced into involuntary bankruptcy.

152. The Prerequisites of Involuntary Bankruptcy.— A debtor may be thrown into involuntary bankruptcy when he shall have performed any act or omission which amounts to what is known as an "act of bankruptcy." Acts of bankruptcy consist in the debtor having, within 4 months—

(a) Conveyed, transferred, or removed any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or —

(b) In the debtor having transferred, while insolvent, any portion of his property to one or more of his creditors, with intent to prefer such creditors over his other creditors; or —

(c) In the debtor having permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale, or final disposition of any property affected by such preference, vacated or discharged such preference; or —

(d) In the debtor having made a general assignment for the benefit of his creditors; or —

(e) In the debtor having admitted in writing his inability to pay his debts, and his willingness to be adjudged a bankrupt on that ground.

Any person who has performed any of these acts of bankruptcy may be proceeded against in a Federal Court as a bankrupt.

153. The Cost of Bankruptcy Proceedings. — If the petitioner in voluntary bankruptcy proceedings makes affidavit that he has not and can not obtain the money to pay court fees, he may be excused from such payment; otherwise, the fee of $25 must accompany the petition in all cases. Of this the Clerk of the Court receives $10, the Referee, $10, and the Trustee, $5. In addition to this, the Referee receives one per cent of all dividends and commissions, and the Trustee receives, from all dividends and commissions, a fee not exceeding three per cent of the first $5,000, two per cent of the second $5,000 and one per cent of the remainder.

From what has preceded, it will be seen that the expense of a case in which the net assets for distribution amount to $8,000, exclusive of attorneys' fees, would be as follows:—

Clerk's Fee	$ 10
Referee's Fee	10
Referee's Commission	80
Trustee's Fee	5
Trustee's Commission on first $5,000 at 3%	150
Trustee's Commission on last $3,000 at 2%	60
Total costs	$315

154. Attorney's Fee.— The petitioner in bankruptcy proceedings is allowed a reasonable attorney's fee to be fixed by the court, and to be paid out of the proceeds of the estate before distribution.

155. (VI) Termination of Contract by Impossibility of Performance.— The Supreme Court of the United States has stated the law upon this subject, as follows: —

(a) "If a person contracts to do that, which at the time is impossible, the contract will not bind him, because no man can be bound to perform an impossibility."

(b) "But when a contract is an agreement to do a thing possible in itself, the performance is not excused by the occurrence of an inevitable accident or other contingency."

Illustration.— (a) Wayne agreed to walk from New York to San Francisco in a day. The contract was held void because the thing that Wayne agreed to perform was in itself impossible.

(b) Hart agreed unconditionally to complete a house by a certain date. When the house was almost finished, it was struck by lightning and burned. Hart was prevented by these circumstances from completing his contract according to its condi-

tions; he was held answerable, nevertheless, for all damages arising by reason of his breach of contract, as the thing that he had agreed to perform was, in itself, entirely possible, and was rendered impossible only by the occurrence of events having no natural connection with the thing originally agreed to be done.

156. Care in the Formation of Contracts. — As might be concluded from the illustration last given, care should be taken in making a contract, the performance of which might be rendered impossible by some unexpected event, so that the obligation of performing shall be properly qualified and limited. For example, the contract for the completion of the house above mentioned should have set forth that the contractor would complete the building within a time specified " unless prevented by the public enemy, insurrection, inevitable accident, or the act of God."

157. Impossibility Arising from Sickness or Death. — A contract for *personal* service is discharged by the incapacitating sickness or death of the promisor.

Illustration. — An opera singer who was under contract to give a number of entertainments, became physically unable to perform his entertainment contracts, whereby a large amount of advertising was rendered worthless, and his managers sustained considerable loss. The managers sued the singer for damages. It was held that he was not liable, as his contract was for personal services, and its performance was completely excused by his physical inability.

158. (VII) Breach.— Breach of contract is the inexcusable refusal or neglect to perform a contract. In every case of breach of contract, the innocent injured party has a right of action against the violator of the contract for the recovery of such damages as the innocent party has sustained.

Illustrations.— Whitney contracted to deliver Wade 10,000 bushels of wheat at a certain time and price. Wheat advanced 10¢ per bushel, and Whitney refused to perform his contract. Wade was held entitled to recover from Whitney the damage he had sustained.

159. (VIII) Limitation.— The limitation by which an obligation may be discharged may be (a) contained in the terms of the contract itself, or (b) effected by operation of law.

Illustration.— (a) A shipper of stock entered into an agreement with the railroad company that suit to recover any damages arising in the shipment of stock should be barred unless brought within 40 days after the damage arose. A wreck occurred by reason of which the shipper sustained a loss. He neglected to bring action within 40 days. In this case it was held that the right of action was barred by the limitation contained in the contract of shipment.

(b) Henry owed Hale on a note which had been due for more than six years, during which time no payments or promise of payment had been made. Suit was brought in a Michigan court for recovery of the debt. Under the laws of Michigan a promissory note becomes outlawed six years after its maturity, unless a new promise or a payment of all or part

of the debt is made. In this case the note was held barred by the statute of limitation, and recovery was rendered impossible by operation of law.

160. Statutes of Limitation.— Statutes limiting the time within which an action may be brought are designed to prevent claimants delaying until important evidence on the part of the defense has been lost, before asserting and testing their rights.

Illustration.— (a) Nelson held a claim against Ralph. Wheaton was Ralph's sole witness, and possessed knowledge of facts sufficient to defeat Nelson's claim. Under the old system, Nelson might have delayed any length of time before asserting his claim against Ralph; he might have delayed until Ralph, or Wheaton, or both of them had died, and then, after all possible hope of defense had been destroyed, he might have enforced his claim against Ralph's estate.

(b) Since the enactment of limitation laws, the claimant in nearly every State of the Union is obliged to bring his suit within a definite time, or be forever barred from bringing it at all.

161. What Constitutes the Statutory Period.— The period within which an action must be brought varies in the several States, and with various forms of action. Actions on debts, accounts, and notes are usually barred in six years; on bonds, in ten years; for the recovery of the possession of real estate, in fifteen years; judgments of courts of record are usually barred after ten years. (See table in Appendix)

162. How the Period of Limitation Is Computed.— The statutes of limitation do not apply to an obligation until a suit can be brought upon it, or in other words, the period of limitation is computed from the time at which the obligation becomes due. Thus, in a note, the period of time is not computed from the date when the note was given, but from the date when the note fell due. In a contract for continuous services, the statutory limit is computed from the time when the last service was rendered. In a running account on which payment has been made from time to time, from date of the last payment. In an open account upon which no payments have been made, from the date of each item. Part of an account may be barred by limitation while other portions of the same account remain in full force. On an account stated, the statutory period is computed from the date from which the balance was struck and agreed upon. Upon a judgment, the period of limitation is computed from a time at which the judgment was rendered. Upon a trespass, the period of limitation is computed from the time at which the trespass was committed.

163. Absence from the State.— As a general rule, the statutory period is to be computed only while the defendant resides in the State. While he resides beyond the process of the courts of a State, the statute does not run in that State. If the law were otherwise, all a defendant would need, to escape suit, would be to move beyond the of the reach plaintiff until the statutory period had elapsed, when he

would be again at liberty to return to the State without fear of suit.

164. Deduction of Time of Absence.— Generally, the whole time of the defendant's residence in the State, either continuously or at intervals, must equal in the aggregate the period fixed by the law of the State as the statutory limit, or the claim will not be barred, no matter how long it has run.

> **Illustration.**— Henry owed Summers a debt that fell due Jan. 2, 1892. On Jan. 2, 1893, (or a year after the debt was due,) Henry removed from the State and did not return again until Jan. 15, 1898 (more than six years after the maturity of the debt). Summers then sued Henry upon the claim. Henry contended that the debt was barred by limitation. The court held that the debt was still in force, and was not outlawed, and would not have been outlawed for five years after the date of Henry's return. In other words, to bar the claim, it would have been necessary for Henry to have been a resident of the State, either continuously or at intervals, for a period aggregating six full years.

165. Law of Forum Applied to Limitations of Actions.— It is exceedingly important to note that the limitation law of the forum where the action is brought governs the action.

> **Illustration.**— Suppose an account contracted in Michigan fell due in 1890. In 1894 the debtor removed to Indiana, where he remained six years. If the account were then sued upon in Indiana, the debtor could effectually plead the statute of limitations of Indiana, which bars the account after six years' opportunity to pursue the remedy in that State.

If the creditor delayed bringing action until the debtor moved back to Michigan (where the statutory limit is also six years), the creditor would still have two years left in which to bring suit in a Michigan court, for the debtor had been a resident of Michigan only four years after the obligation fell due, and he must have been subject to the process of the courts of Michigan for the period of six years before the claim would be held barred. Under such circumstances, the bringing of an action in the wrong State would amount to forfeiture of the claim by operation of law, and hence the importance of the rule.

166. Meaning of the Term "Residence." — By residence is generally meant a person's fixed abode, to which, when absent temporarily, he intends again to return.

167. What Residence Outside the State is Sufficient to Suspend the Statute.— It is generally, but not invariably, held in the United States that mere temporary physical absence from the State will not suspend the running of the statute of limitations, but that such absence must amount to a *residence out of the State*, using the term residence as above defined.

Illustration.— It was held in Minnesota that one who was elected to the United States Senate from that State, and who rented a house in Washington, where he lived with his family during sessions of Congress, returning to his home in Minnesota in intervals between sessions, did not so reside out of the State of Minnesota as to suspend the running of the statute of limitations.

168. The Statute of Limitations Must be Insisted Upon.— If the defendant in an action barred by limitation fails to insist upon the defense that the claim is outlawed, he is held to have waived the defense.

Illustration.— Advantage of this point is often taken in the following manner: In many courts a judgment not appealed from within a certain number of days, becomes absolute and can not be appealed from thereafter. Suits are frequently brought in such courts upon claims which have been barred by the statute of limitations. The debtor, relying upon the supposition that the claim against him has been barred, and ignorant of the law requiring that the defense must be insisted upon to become effectual, puts in no appearance, and permits judgment to be taken against him by default. If the defendant does not appeal from such judgment within the statutory time, it becomes absolute, and he has been successfully trapped into a renewed liability upon the outlawed obligation.

169. Renewal of Debt by Part Payment. — Part payment of a debt, made at any time, renews the debt for a further period beyond the date of such payment, equal to the original period of limitation.

Illustration.— Whittaker owed Olney an account. Olney bought goods of Whittaker, the price of which, with Whittaker's consent, was credited upon the account. It was held that the debt was renewed for the whole statutory period, dating from the time of such credit.

170. Renewal of Debt by New Promise. — A new promise, made in writing, will renew an

outlawed debt. In all cases, the statute runs from the date of such new promise.

171. Renewal of Debt by Payment of Interest.— Payment of interest is a recognition of an existing obligation. Such payment renews the outlawed principal; but payment of outlawed principal will not renew the obligation to pay outlawed interest. In other words, the payment of interest is regarded as an acknowledgment that there is a principal sum remaining unpaid upon which interest has accrued. But the payment of principal is not itself an acknowledgment that there is any interest due and unpaid.

172. Renewal of Joint Obligations.—The renewal of a joint obligation by payment, or a new promise made by one or more of the joint obligors, does not renew the obligation as to the other joint obligors who do not join in such renewal.

> **Illustration.**— Key, Cooley, and Short gave a note jointly to Ames. Key paid the interest annually for seven years after the note fell due. Cooley and Short never made any payment or new promise. Ames finally brought suit against all the parties to the note, and the obligation was held barred by limitation as to Cooley and Short, but in full force as to Key.

173. Indorsement of Unpaid Interest.— The holder of a note can not, by indorsing upon it as paid, interest which in fact has not been paid, thereby renew the note. A payment, to renew the obligation, must be the voluntary act of the debtor; a debt can

not be renewed by the independent act of the creditor.

Illustration.— North held Parr's note, which had become outlawed by limitation. Without the knowledge of Parr, North indorsed upon the note a statement that the interest had been paid in full. As a matter of fact, no interest had been paid within the statutory period. The indorsement was held a nullity; it was wholly inoperative for the renewal of the note.

BOOK TWO.

ACCOUNTS, COMMERCIAL PAPER, AND SECURITIES.

CHAPTER I.

ACCOUNTS.

"What is just and right is the law of laws."— *Legal Maxim.*

174. Accounts and Account Books.
175. Account Books as Evidence.
176. The Character of the Books Must Be Proved.
177. Books of Original Entry.
178. Refreshing the Memory.
179. Entries Made on Slates or Slips.
180. Form of Books of Account.
181. Improper Subjects of Account.
182. An Account Must Arise in a Direct Line of Its Proprietor's Business.
183. Proper Subjects of Accounts.
184. Accounts Are Evidence of the Matters Stated Only.
185. Amounts Stated in Gross.
186. Illiteracy in Accounts.
187. Pass Books.
188. Open Accounts.
189. Accounts Stated.
190. Failure To Object to an Account.
191. The Effect of an Agreed Balance.
192. Alterations and Erasures in Accounts.
193. Sale and Assignment of Accounts.
194. Form of Assignment of Account.
195. Assignment for the Purpose of Joining Claims.
196. Joining Claims for Jurisdictional Purposes.

174. Accounts and Account Books.— An account is a record of transactions between debtor and creditor. Account books are books containing accounts. One entry may constitute an account, but

a book containing only one entry would not have the legal effect of an account book. The force of an account book as evidence comes from the fact that it comprises consecutive entries, made in the regular course of business, at or near the time of the transaction. The necessity of account books as evidence, arises from the inability of the average human memory to retain the details of the numerous transactions which make up a business.

175. Account Books as Evidence.— The force of account books as evidence is not the same in all the States. They are generally *prima facie* evidence of what they contain; that is they stand as full proof until contradicted.

176. The Character of the Books Must Be Proved.— Before a book of account will be received in a court as evidence, it is usually necessary to prove that it is a *book of original entries*, and that the entries were *true and correct*, and that such entries were *contemporaneous with the transactions entered.*

177. Books of Original Entry.— A book of original entry is one in which an entry is first made; it is the book containing the first minutes of a transaction. Only books of original entry are received as proof of their contents. Thus, if entries are made first in a daybook and are afterward transcribed to a ledger, the entries in the daybook *are*, and the entries in the ledger *are not*, admissible as evidence. The reason for this is that the entries in the ledger are not contemporaneous with the transaction, but are

subject to the suspicion of having been expressly prepared to meet the emergencies of the case in which they are presented.

Illustration.— Clinton sued Sweet on an account, the correctness of which he endeavored to prove by producing in court a ledger to which entries had been transferred from a journal. The journal was not produced in court. It was held that the ledger was incompetent as proof of the items therein recorded. The journal would have been the proper book, as the original entries are the only ones receivable in a court in proof of an account.

178. Refreshing the Memory.— While a book other than a book of original entry is not *prima facie* proof of the correctness of its contents, it may be used for the purpose of aiding a witness in refreshing his memory as to the correctness and dates of items *therein* set forth. Under such circumstances, the items are not proved by the record of the account, but instead, they are proved by the verbal testimony of the witness.

179. Entries Made on Slates or Slips.— When entries are made temporarily on slips of paper, or upon a slate, or upon shingles or boards, or upon notched sticks, and are afterward, within a reasonable time, regularly transferred to a book, to be kept in permanent form, such book is regarded as the book of original entry.

180. Form of Books of Account.— The forms established by the best usage are the most desirable and satisfactory. Anything aside from usual form

is subject to criticism. The best form is that of daily entries of debits and credits made in a day book or journal. If, however, a person uses but one book and that book is in the form of a ledger, such ledger will be regarded as a book of original entry.

181. Improper Subjects of Account.— Not everything that may be entered in books will be evidenced by books. Books of account are not evidence at all of matters which are not the proper subject of accounts. The book must be a record of *things done*, and not of executory contracts for *things to be done*. Thus, an entry, "John Smith promises to pay this account for William Jones," would not be evidence that John Smith had made any such promise. An entry in an account book following a bill of goods, and stating that "these goods are to be returned in thirty days, if not sold," would not be proof of an agreement to return the goods. The reason of this rule is that it would be unjust to hold that any person could be bound by an arbitrary entry made by another person.

182. An Account Must Arise in the Direct Line of Its Proprietor's Business.— To be evidenced by the books of a business, an account must arise in the direct line of that business. Thus, a charge in this form, "Thomas Ryan debtor to damages resulting from his negligence, "$500," would not be evidence that damages to that extent, or to any extent, had been sustained.

183. Proper Subjects of Account.— Entries in account books are not confined to mercantile trans-

actions; they may relate to any mutual transaction arising in the course of any business, and whether commercial, professional, or in any class of trade or service, but they must arise *in the direct line of the business.* Thus, the books of a dry-goods merchant, relating to that business have been held incompetent as evidence of the price of a horse charged therein, the sale of which had no relation to the conduct of the dry-goods trade.

184. Accounts Are Evidence of the Matters Stated Only.— The price, quantity, quality, measure, and weight, entering into a transaction may properly be stated in books of original entry, and, when so stated there, the books will be *prima facie* evidence of these matters. Omission of these particulars will not destroy the account as evidence, but it will leave these things to be supplied by other proof. The account is evidence of such things as are properly stated only, and therefore great pains should be taken by the bookkeeper to make the statement of every transaction full and complete.

185. Amounts Stated in Gross.— The book of original entry should specify the items of the account. Accounts stated in gross are not usually received as evidence. Thus, a charge, "to one year's work, $312," entered in the book of a day-laborer, would not be evidence. Such an account should be made up of daily entries, that each day's work might be shown.

186. Illiteracy in Accounts.— Accounts kept by illiterate people in the regular course of their

business, or employment, although imperfect in form and spelling, and not readily legible, are held good evidence if they are not inadmissible for reasons apart from their illiteracy.

187. Pass Books.— Pass books, such as are often used by customers of banks and provision stores, in which entries are made at the very time of the transaction recorded, are regarded as books of original entry. They are very high evidence of the matters they contain if it can be shown that they are complete. A depositor having a pass book, or a purchaser of goods employing a like method, should invariably carry the book with him when transacting business with the concerns with which the account is carried.

> **Illustration.**— Walters was a depositor at a certain bank. It was his custom, upon making a deposit, to invariably have the same credited in his pass book. A dispute arose between Walters and the bank, in which the amount of money Walters had deposited was the question in issue. The bank held that its books were the best and only evidence of this account. The court held, however, that the jury must consider the pass book of Walters as being equal in conclusiveness to the books of the bank, and that it was for the jury to decide whether the books of the bank or the pass book of Walters were correct.

188. Open Accounts.— Open accounts are those upon which no balance has been struck. They are sometimes called accounts current.

189. Accounts Stated.— An account stated is one upon which a balance has been struck and agreed upon as correct.

190. Failure to Object to an Account.— When an account is rendered, and no objection is made to it within a reasonable time, the silence of the debtor is *prima facie* an admission of the account's correctness. This admission may, of course, be contradicted by proof to the contrary. An account is always open to contradiction, correction, and explanation.

191. The Effect of an Agreed Balance.— When the parties agree upon a balance, the account becomes an account stated, and is *prima facie*, but not conclusive evidence of its own correctness. The debtor may deny that he ever agreed to it, or he may allege that he agreed under misapprehension of the facts, or he may show that the balance struck is incorrect and was the result of an error. However, when an account is shown to have been agreed upon, very strong evidence is necessary to overcome the presumption that it is correct.

192. Alterations and Erasures in Accounts. — The legal value of account books as evidence is usually destroyed by any suspicious or unexplainable erasures, interlineations, or alterations. When an account is made out after a dispute has arisen, there is a strong presumption against its honesty.

193. Sale and Assignment of Accounts.— An account may be sold and transferred by assignment, and the purchaser may bring suit upon it in his own name. The transferee acquires the title of the vendor subject to all defenses.

194. Form of Assignment of Account.— When the account is to be assigned, it is customary

to write, either upon the account itself, or upon a paper attached to the account, a form of assignment which may be as follows: —

For value received, I hereby sell, assign, transfer, and set over to Amos Williams, all my right, title, and interest in and to the within account, hereby covenanting that there is now due and remaining unpaid thereupon the sum of five hundred dollars ($500) over and above all counterclaims.

Dated May 1, 1900.

Joseph Wheelock.

195. Assignment for the Purpose of Joining Claims.— When a large number of creditors have small accounts against the debtor, it is customary for them to assign all of the claims to one of the creditors who brings suit in his own name upon all of the accounts, thereby saving to the creditors the increased expense of a multiplicity of suits. Under such circumstances, each creditor bears a portion of the expenses of the suit proportionate to the amount of his claim.

Illustration.— Andrews, Young, Willson, Rich, Wade, Anderson, and Wolfe held small claims against Whittaker. Each of these creditors assigned his claim to Wolfe who sued Whittaker in his own name, and recovered judgment, which he collected and distributed among all of the creditors, after deducting the proportionate amount of the expense chargeable to each.

196. Joining Claims for Jurisdictional Purposes.— When claims are too small to be separately sued upon in a court of record, they are

frequently joined, or "bunched," as it is called, until in the aggregate, they reach the amount that brings them within the jurisdiction of the court. The advantage of suing a claim in the higher court is that the process issued by such court frequently confers upon the claimant rights greater than those conferred by the process of an inferior court.

Illustration.— Williams, Blake, and Brown had each claims of less than $100 against Wilkinson, who owned land in Michigan subject to attachment. These creditors had reason to believe that if suit were commenced, Wilkinson would deed away his land, and, thereby endeavor to defeat the recovery of their claims. A claim of less than $100 is not the subject of a suit commencible by attachment against lands in Michigan. By adding their claims together, these creditors ascertained that the total amount held against Wilkinson was more than $100. Therefore they assigned their claims to one of their number, who brought suit in a court of record, commencing by attachment which he levied upon the land, thereby effectively preventing Wilkinson from disposing of it until after judgment was rendered and satisfied.

CHAPTER II.

COMMERCIAL PAPER.

"If you depart from the law, you will wander without a guide." — *Legal Maxim.*

197. Commercial Paper.
198. Negotiable Paper.
199. Tests of Negotiability.
200. The Legal Advantage Given Negotiable Paper.
201. The Reason for the Rule.
202. What Constitutes an Innocent Purchaser?
203. The Purchase Must Be for Value.
204. The Purchase Must Be Made before Maturity.
205. The Purchaser Must Not Have Notice of Defense.
206. Defenses against Which even an Innocent Purchaser Is Not Protected.
207. Negotiable Paper Void by Operation of Statute.
208. Notes Voidable through the Inability of the Maker.
209. Lunatics under Guardianship.
210. Negotiable Paper Void by Fraud of Original Payee.
211. Distinction between Negotiable Paper Stolen before and after Inception.
212. Fraudulent Material Alteration.
213. Bona Fide Purchasers Are Not Protected against Material Alterations.
214. Forgery.
215. The Detection of Forgery.
216. Uniformity of Signature.
217. The Necessity for Filling up Blanks in Commercial Paper.
218. Forgery of Signature: Liability of Banks.
219. Signatures Affixed by Another.

197. Commercial Paper.—Commercial paper is of two kinds, negotiable and quasi-negotiable. Negotiable paper includes promissory notes, certificates of deposit, checks, drafts, money bonds, coupons, and bills of exchange. Quasi-negotiable paper includes bills of lading, warehouse receipts, stock certificates, and other commercial paper, which, while not strictly negotiable, is capable of being bought and sold.

198. Negotiable Paper.—All negotiable paper is commercial paper, but not all commercial paper is negotiable paper. The term "negotiable paper," in its strict legal sense, is applied only to unilateral, commercial contracts, wherein a certain person promises to pay to a certain person therein named, or to his order, or to bearer, a certain sum of money at a certain time and place therein specified.

199. Tests of Negotiability.—In general, the tests of negotiability are as follows; that is to say, all negotiable paper must possess, in addition to words of negotiability,—

(a) Certainty of payor;

(b) Certainty of payee;

(c) Certainty of amount which must be payable in money;

(d) Certainty of time when due;

(e) Certainty of place where payable.

Usually, when commercial paper fails to possess any one of these characteristics, it is denied the benefit of the favorable and peculiar laws which are applicable to negotiable paper only.

200. The Legal Advantages Given Negotiable Paper.— Negotiable paper is the only species of property to which the purchaser may acquire by purchase a title better than that possessed by the one of whom he purchased. Ordinarily, one who purchases personal property acquires the title possessed by his vendor and nothing more, but an innocent purchaser who gives value for negotiable paper acquires a title thereto that is generally perfect, even though the person of whom he purchased may have had no title whatever to the paper sold, and may have acquired it dishonestly, even to the extent of having procured it by theft.

Illustration. — Jackson purchased a promissory note from Blake without knowing or having reason to suspect that Blake had come by the note fraudulently. Jackson bought the note before it was due, and paid Blake a reasonable price for it. At the date of its maturity, Hoyt, the maker of the note, declined to pay it, claiming that Blake had procured it from him in payment for some property which had turned out to be worthless. After expiration of the three days of grace, Jackson sued Hoyt for the amount of the note, and the court held that, while Blake would have been unable to have recovered any part of the note from Hoyt, Jackson, being an innocent purchaser, who had given sufficient value for the paper before its maturity, was held entitled to recover the full amount.

201. The Reason for the Rule.— The special safeguards thrown about the innocent purchaser of negotiable paper spring from the desire of the commercial and the legal world to invest this class of

commercial paper, as far as possible, with the characteristics of money. When we consider that not less than 95 per cent of all business transactions are settled, not in money, but by the exchange of commercial paper, the reason for the rule is apparent. It is intended by the law that negotiable paper issued by a maker, or accepted by an acceptor of known credit and integrity, shall circulate as freely as currency. The enormous percentage of business transacted by the use of negotiable paper evidences both the warrant and the success of this rule.

202. What Constitutes an Innocent Purchaser.— An innocent purchaser (or a *bona fide* purchaser, as it is often termed) of negotiable paper is one who purchases such paper (a) for value, (b) before its maturity, (c) in good faith, and without notice, either actual or constructive, of defenses against it.

203. (a) The Purchase Must Be for Value. — To constitute one a *bona fide* holder of negotiable paper, he must have given a valuable consideration for it, and such consideration must be fairly adequate to the value of the paper received; that is, the consideration must not be so inadequate as to necessarily arouse suspicion and put the purchaser upon inquiry as to the character of the paper.

Illustration.— Ryan gave $188 for a note of $200. It was held that the consideration was reasonable and adequate, and that Ryan was not put upon inquiry by the six per cent discount offered. If, however, a note of $200 had been offered to Ryan for $50, in the absence of a valid explanation, the

circumstances would have been such as to have put Ryan upon inquiry, and his neglect to exercise diligence to inform himself of the possible guilty cause of the excessive discount offered, would be treated as an act of bad faith against the one who was damaged thereby: under such circumstances, Ryan would not have been held to be an innocent purchaser and all defenses, good against the original payee, would be good as against him.

204. (b) The Purchase Must Be before Maturity.— There is no such thing as an innocent purchaser of past due paper. The fact that negotiable paper is due and remains unpaid, is, of itself, notice that there is something wrong about it, or some defense against it, for the presumption is that otherwise it would have been paid at maturity.

Illustration.— Hobart held a note of Johnson which fell due Oct. 1, 1899. On Oct. 10, 1899, he sold the note to Smith, who afterward sued the maker of the paper. Smith assumed that he was an innocent purchaser for value, and that no defense could be made against the paper in his hands. The court held that the paper was subject to all defenses and offsets against it that would have been good against the original payee. The fact that Smith purchased the paper after it was due removed from him the characteristics of a *bona fide* purchaser, and left the paper held by him open to all objections.

205. (c) The Purchaser Must Not Have Notice of Defense.— If one have effectual knowledge of a defense against, or a defect in, commercial paper, he purchases it at his peril and subject to such defect or defense.

Illustration.— Roberts purchased a note of Webster which Roberts knew to have been given for property, the value of which had been grossly misrepresented. It was held that Roberts's knowledge of the misrepresentation destroyed his character as an innocent purchaser, and that the defense arising by reason of misrepresentation could be maintained against the notes in his hands as effectually as though the notes had remained in the hands of the original payee.

206. Defenses against Which Even an Innocent Purchaser Is Not Protected.— If, by reason of (a) the operation of a statute, or (b) the inability of the maker, or (c) the fraud of the original payee, the negotiable paper in any State is shown to have had no legal inception, or (d) if the paper has been subjected to a fraudulent and material alteration, it is unnegotiable in the hands of even a *bona fide* purchaser.

207. (a) Negotiable Paper Void by Operation of Statute.— When it is provided by statute that a certain transaction, and all obligations arising out of such transaction, shall be void, commercial paper coming into existence by virtue of such transaction will be held void in the hands of even a *bona fide* purchaser.

Illustration.—Atkins gave a note to Bently in settlement of a balance growing out of a wheat speculation, in a State where such speculations were declared by statute to be illegal, the statute further providing that all obligations growing out of such illegal transactions should be void. The note above mentioned was negotiated by Bently to one who bought

it without notice of the defenses, and for value. The court held that the note was void even in the hands of its *bona fide* purchaser on the theory that the statute rendered such paper void from its inception, and that "the law must be sustained by the law, even though commerce fail."

208. (b) Notes Voidable through the Inability of the Maker.— If a lunatic, infant, or other person incompetent to contract, gives a note or other negotiable paper, the innocence of the purchaser of such paper will not supply the absent capacity of the maker. The defense of incompetency is governed by the law of contracts, and by the circumstances of each case, and if a good defense at all, is usually held good against a *bona fide* purchaser.

Illustration.— Mrs. Delton, a married woman, who resided in a State under the laws of which she could not legally become surety for her husband, signed a note with her husband as surety. It was held that her defense could be maintained at her option even against an innocent purchaser.

209. Lunatics under Guardianship.— The courts have carried the principle stated in the last section so far that a bank has been held liable for payment of checks issued by a lunatic under guardianship, although the bank had no knowledge of the mental incompetency of such depositor, and paid the money over in good faith. In other words, the check of a lunatic under guardianship was held to confer no authority upon a bank to pay out money on his account.

210. (c) Negotiable Paper Void by Fraud of Original Payee.— If negotiable paper comes into the hands of the original payee without the assent of the maker and through the fraud or theft of the payee, the paper will be void. The theory is, that, if the paper did not come into existence legally, it never came into existence at all. The life of commercial paper begins with its delivery to the payee, and if there is no such delivery, the paper has no life, and is void.

> **Illustration.**— Atkinson executed a note which he left lying on his table. Bliss, the payee named in the note, chanced to see the paper, and took it up without Atkinson's knowledge, and negotiated it. The note was held void in the hands of its *bona fide* purchaser.

211. Distinction between Negotiable Paper Stolen before and after Inception.—As has been before indicated, by the inception of negotiable paper is meant its delivery to the payee. A note or bill of exchange, once duly delivered, acquires a legal existence, which it retains even in the hands of one who has stolen it. But a note or bill of exchange which has never been legally delivered, has no legal existence, and is void in the hands of its every holder, regardless of the question of the holder's good faith.

212. (d) Fraudulent Material Alteration.— The material alteration of negotiable paper will render the paper voidable as to any party to the paper who did not consent to the alteration. The unauthorized insertion of the figure " 8 " before the words

" per cent interest " has been held a material alteration. So writing in the words " or bearer " after the name of the payee in a negotiable note is a material alteration.

Illustration.— Burns and Tompkins joined in executing a note to Holt. At the time of the signing of the instrument the interest therein stipulated was six per cent. Afterward Burns consented that Holt change the interest to eight per cent. It was done in writing on the face of the note without Tompkins's knowledge or consent. It was held that the material alteration discharged Tompkins from liability on the paper.

213. Bona Fide Purchasers Are Not Protected against Material Alteration.— Even a *bona fide* purchaser is not protected against the invalidating effect of a material alteration. The paper is voidable against him as well as against an original party to it. In this respect such paper is like forged paper or counterfeit money.

Illustration.— Winans executed a note to Loose which, under its original conditions, fell due in ninety days. Loose fraudulently reduced the date of maturity to thirty days. Loose then negotiated the paper to Dill who was innocent of the change, and who paid full value for the paper. Dill attempted to enforce the obligation against Winans. Winans proved the alteration and that such alteration was made without his knowledge or consent. The court held that the material alteration of the paper rendered it void in the hands of Dill, its *bona fide* purchaser.

214. Forgery.— Forgery is a crime, and consists in falsely making, or materially altering with intent

to defraud, any writing which, if genuine, would be of legal force. One who fraudulently and without authority alters a legal document, destroys the validity of the instrument, and at the same time commits a punishable crime.

215. The Detection of Forgery.— The crime of forgery, like that of counterfeiting, is almost certain of detection. There is a personality about handwriting that is not easily mistaken, when the authentic is compared with the false. Forged handwriting is not usually written; it is *drawn*. It is not usually made up of continuous lines, but is generally composed of separate strokes. Frequently the writing or signature to be imitated is first traced with pencil, and then the tracing is followed with the pen, the pencil mark being covered with ink. The microscope will reveal the detached strokes as well as the pencil marks, which are rarely fully covered or erased. The appearance of tracing, together with uncovered pencil marks, constitutes strong evidence of forgery. In addition to this, forgers, in common with other people, have certain fixed habits of writing which almost invariably appear, despite the forger's most strenuous efforts to conceal them. Thus the identity of the forger can often be determined from the forgery itself.

There is, furthermore, a tendency on the part of the forgers to *overdo* the work, and, in their anxiety to imitate the salient characteristics of the penmanship they seek to simulate, they usually give these copied characteristics and eccentricities undue and unnatural prominence.

The use of a water mark in paper has been the means of the detection of many forgeries. Thus, when a will had been forged, the fraud was discovered by reason of the fact that the water mark in the paper disclosed that the date of the manufacture of the paper on which the purported will was written was several years subsequent to the date of the death of the testator.

The forgery of typewritten manuscript is readily detectable as every typewriting machine has its own individuality caused by distinct mechanical peculiarities.

216. Uniformity of Signature.— Every business man should adopt an open, characteristic signature, and should always sign his name in the same way. This will not prevent imitation, but it will limit imitation to a dangerously narrow field, and will be a matter of great convenience to his bankers who must, in paying his checks and discounting his paper, judge of the genuineness of his signature at their own peril.

217. The Necessity of Filling up Blanks in Commercial Paper.— A heavy pen mark should be drawn through every blank space not filled up with writing in *every* legal instrument and especially in commercial paper. If this is not done, and the amount of the sum named in the paper is afterward increased (or "raised" as it is called) by some holder fraudulently filling up such blank space, the maker of the paper must lose the additional amount which his carelessness has led an innocent third party to pay.

Illustration.— A check was drawn by Murphy on his bank, ordering the payment of $2. The word "two" was written near the word "dollars" printed in the check, and the remainder of the line was left blank. The check was negotiated several times before it reached the bank, and one of its holders fraudulently inserted the words "four hundred" before the words "two dollars," making the check order payment of "four hundred two dollars." The bankers on whom the check was drawn paid the amount named in the check as altered. There was nothing in the check to arouse suspicion, and the bankers paid the check in good faith and without negligence. It was held that Murphy, and not the bank, must lose the four hundred dollars which had been paid through the fraudulent alteration of the check which had been made possible by Murphy's negligence in neglecting to draw a line through the blank space.

218. Forgery of Signature: Liability of Banks.— A bank is bound to know the signature of its depositor. If it pay a check or draft to which the signature has been forged, it must bear the loss.

The rule that a bank is bound to know the signature of its depositor, is very strictly enforced, and has been carried so far that it has been held, in an extreme case, that a bank is bound to know the depositor's signature better than he knows it himself.

Illustration.— As an illustration of this extreme rule, and the liability of a bank for failure to recognize a forgery of the signature of its depositor, the following case is stated: A depositor received and examined paid checks returned to him from time to time by his bank, and failed to discover that among

them there were certain checks to which his name had been forged. He afterward discovered the forgery by means of the fact that his balance at the bank was smaller than it should have been. It was revealed that systematic forgery of his checks had been carried on for several months. He had examined his checks from time to time without discovering it. The bank was held liable for the payment of the forged paper.

219. Signatures Affixed by Another.— An obligor's signature, affixed by another to an instrument at the obligor's request, is valid and binding, provided the obligor is not deceived as to the character of the instrument.

CHAPTER III.

THE KINDS, CHARACTERISTICS, AND ESSENTIALS OF NEGOTIABLE PAPER.

"The knowledge of smatterers is mixed ignorance."—*Legal Maxim.*

220. Kinds of Negotiable Paper.
221. Parties to Promissory Notes.
222. Parties to Bills of Exchange.
223. Acceptance of a Bill of Exchange.
224. The Liability of the Acceptor.
225. Kinds of Bills of Exchange.
226. Bank Drafts.
227. Private Checks.
228. Certified Checks.
229. Certificates of Deposit.
230. Commercial Bonds and Interest Coupons.
231. Words of Negotiability.
232. Paper Payable to Bearer.
233. The Disadvantages of Paper Payable to Bearer.
234. Paper Payable to Order.
235. Indorsement in Blank.
236. The Effect of Indorsement in Blank.
237. Indorsement in Full.
238. Indorsement Must Be of Entire Instrument.
239. Restrictive Indorsement.
240. Qualified Indorsement.
241. Indorsement without Recourse.
242. Waiver of Rights by Indorsement.
243. Waiver.
244. Conditional Indorsement.
245. The Payor Must Be Certain.

246. The Payee Must Be Certain.
247. The Paper Must Be for the Payment of a Certain Sum of Money.
248. The Time of Maturity Must Be Certain.
249. Paper Payable on Contingency.
250. In Some States Paper To Be Negotiable Must Be Payable in Bank.
251. The Words "Value Received."
252. Antedated and Postdated Paper.
253. The Date of Negotiable Paper.
254. Omissions and Discrepancies.

220. Kinds of Negotiable Paper.— The most common kinds of negotiable paper are Promissory Notes and Bills of Exchange.

A Promissory Note is a written promise to pay a certain sum of money to a certain person, at a certain time and place therein specified.

Illustration.

$1000 Battle Creek, Mich., April 15, 1900.

On or before one year after date, I promise to pay to Reuben White, or order, One Thousand Dollars, at the NATIONAL BANK, Battle Creek, Mich., with interest at the rate of 7 per centum per annum.

For value received.

Samuel Reynolds.

A Bill of Exchange is a written order or request made by one person and directed to another, ordering such other person to pay to a third person therein named a certain sum of money at a certain time and place therein specified.

Illustration.

$1000. Battle Creek, Mich., April 15, 1900.

On demand, pay to the order of Charles Mc Lean,

One Thousand . . . . . Dollars.

For value received, and charge the same to the account of

Whitcomb Blair.

To Warren Hopkins,
Baltimore, Ohio.

221. Parties to Promissory Notes.— The parties to a promissory note are either original or subsequent. The original parties are those whose names appear upon the paper at the time of its inception. All others are subsequent parties. The person whose name appears at the lower right hand corner of a note, and who is originally liable for the payment of the obligation, is called the maker. The maker's name may appear elsewhere upon the paper, but its usual and proper position is that indicated. One who writes his name on the back of a note *before its inception* becomes thereby a joint maker and not an indorser. One who signs a note, having no interest in the proceeds of the same, and for the purpose of lending his credit to the obligation, is called a surety. The person whose name appears in the body of the paper as the one to whom the note is payable is called the payee. If the payee sign his name on the back of the paper for the purpose of negotiating it, he becomes an indorser. All indorsers and guarantors, and holders of negotiable paper, subsequent to the original payee are called "subsequent parties."

222. Parties to Bills of Exchange.— The original parties to a bill of exchange are the Drawer, Drawee, and Payee. The Drawer is the one making the order or request; the Drawee is the person upon whom the order is made; the Payee is the person to whom the sum ordered paid is made payable. When the drawer accepts the draft, he becomes an Acceptor. The subsequent parties to a Bill of Exchange are the same as subsequent parties to a promissory note, and their rights and liabilities are practically the same.

223. Acceptance of a Bill of Exchange.— Demand drafts are usually accepted by the drawee making payment. If a drawee desires to honor a draft, but does not wish to make payment for it immediately, or if the draft is not payable until sometime "after sight," he makes acceptance by writing the word "accepted" across the face of the paper and signing his name thereto. The acceptance should be dated.

A valid acceptance may be made by writing the word "accepted" together with the acceptor's signature upon the paper at some place other than its face, but the proper and customary method is as stated.

224. The Liability of the Acceptor.— The acceptor of a bill of exchange is under the same obligation, and assumes the same duties and liabilities as the maker of a promissory note. An accepted bill of exchange and a promissory note are governed by substantially the same rules of law, and consequently we shall consider promissory notes and accepted bills together.

225. Kinds of Bills of Exchange.— Bills of Exchange are either foreign or inland. A Foreign bill of exchange is one drawn payable in another country. An Inland bill of exchange is one drawn, and payable in the same country. The States of the Union are regarded as foreign to each other. A bill drawn in one State, payable in another State, is a foreign bill of exchange. If an original bill is lost or destroyed, a duplicate will be issued. The use of bills of exchange minimizes the danger of loss in the transmission of money.

226. Bank Drafts.— Drafts commonly issued and sold to the customers of banks are ordinarily the checks of the bank issuing the same drawn upon some other bank in which the bank of issue has funds on deposit. The terms "Bill of Exchange" and "Draft" are used interchangeably.

Illustration.— If Ivans of Chicago owed Van Wert of New York City $1,000, Ivans may go to his bank in Chicago and buy a draft for $1,000 upon some New York City bank. This draft he can send by mail, and without fear of loss, and Van Wert can collect it in New York City without expense. The draft is nothing more than a check drawn by the Chicago bank against its deposit in the New York bank. The Chicago bank is the same as any other depositor, and its check is the same as any other check. Ivans simply pays for the convenience of using the funds of the Chicago bank deposited in New York. If Ivans had funds of his own on deposit in New York City, he might draw his private check against the same, and such check in the hands of Van Wert would answer the same purpose as the

check of the Chicago bank. The fact is that at present a large proportion of remittances, even though made to distant points, are made by means of private checks.

227. Private Checks.— A private check is a written order of a depositor directed to his banker requesting the latter to pay to a certain person, or bearer, or order, a certain sum of money therein named. The acceptance of a check is made by paying it and is not made in writing. A check is governed by the rules applicable to demand drafts.

228. Certified Checks.— When a depositor desires to add to his check a written assurance from the bank on which it is drawn, that such check will be honored, he causes the cashier, or other proper officers of the bank, to "certify" the check. This is accomplished by such officer of the bank (usually the cashier) writing across the face of the check the word "Certified," and signing his name and official character. The bank is bound to pay such check, upon its presentation, and at all events. When a check is certified, its amount is immediately charged on the books of the bank against the drawer of the check.

229. Certificates of Deposit.—When funds are left with the bank by one who has no regular account, or by one who does not desire to check upon such funds, it is customary for the bank to issue its certificate of deposit for such funds. This certificate is nothing more than the negotiable promissory note of the bank, payable upon demand. Certificates of

deposit are subject to all the rules applicable to promissory notes.

230. Commercial Bonds and Interest Coupons.— Commercial bonds are usually negotiable promises for the payment of money, and to them negotiable interest coupons are frequently attached. The forms of bonds are so numerous, and the methods by which they are secured are so various, that space forbids their discussion here. The interest coupons attached to bonds are designed for the purpose of simplifying the payment of interest and affording a receipt to the obligor for interest paid. These coupons are usually in the form of negotiable notes and may be detached from the bond and negotiated before they are due.

231. Words of Negotiability.— The words "or bearer" and the words "or order" when appearing in negotiable paper are called words of negotiability. Not all commercial paper containing words of negotiability is strictly negotiable, but it is certain that no paper which does not contain them, in one form or another, is strictly negotiable.

Illustration.— The following form of note would be non-negotiable solely for want of words of negotiability: —

$227. Buffalo, N. Y., April 20, 1900.

One year after date, I promise to pay to John Wentworth Two Hundred Twenty-seven Dollars, at the FIRST NATIONAL BANK, Chicago, Ill.

For value received, with interest, at the rate of five per centum per annum.

Hannibal Cleland.

It must not be assumed that because this note is not negotiable, it is not the subject of sale. It is capable of sale and assignment, the same as an account, but the purchaser of it would acquire no better title than that possessed by its vendor. There is no such thing as a *bona fide* purchaser of non-negotiable paper, and one who purchases such paper takes it subject to all defenses.

If, after the words "John Wentworth," the words "or bearer" had appeared, or if the words "or order," had been used in a like position, and the note had been indorsed by Wentworth, the purchaser giving value and buying in good faith, would be protected against all ordinary defenses that might have been urged against the paper in the hands of Wentworth.

232. Paper Payable to Bearer.— Commercial paper payable to bearer requires no indorsement to convey title. The title to the paper passes with the paper itself by mere delivery. Possession of paper payable to bearer is *prima facie* proof of title to it.

233. The Disadvantages of Paper Payable to Bearer.— Paper payable to bearer is used mainly on account of its convenience, as it passes from owner to owner, like money, by mere delivery, but, in general, such paper is dangerous and unsatisfactory. It is the subject of easy theft, and, when issued in checks and drafts, it affords no receipt from the payee to the payor.

234. Paper Payable to Order.— Paper payable to order is transferable, in the first instance, only

by indorsement. Indorsement for the purpose of transfer may be either (a) in blank, (b) in full, (c) restrictive, (d) qualified, or (e) conditional.

235. (a) Indorsement in Blank.— An indorsement in blank is effected by the payee or holder of the note merely writing his name across the back of the paper. As a matter of neatness and convenience, the indorsement should be placed, as nearly as possible, across the reverse side of the left end of the paper. Indorsement anywhere on the paper, however, will be sufficient in law.

236. The Effect of Indorsement in Blank. — When commercial paper has been indorsed in blank, it becomes payable to bearer, and may be transferred from holder to holder by delivery and without further indorsement. But any subsequent holder may render the blank indorsement "special," or "in full" by writing above the name of the person who has indorsed in blank the words, "Pay to the order of Henry James," Henry James being the present owner of the note. In other words, the holder of negotiable paper indorsed in blank may make paper payable to his own order, and in such case, the paper can not be again negotiated until the holder has indorsed it. The holder of paper indorsed in blank may thus protect himself against loss of the paper.

237. (b) Indorsement in Full.— When paper payable to the order of a certain person is by indorsement made payable to the order of a certain other person, it is said to be indorsed and in "full."

Illustration.— Supposing Walter Snow to be the payee in a note drawn payable to order: if Snow desires to negotiate the note to Clare St. Clare in such manner that Clare St. Clare only, and no other person, can claim payment without St. Clare's having first indorsed the paper, he will use the following form: —

Pay to the order of Clare St. Clare,

Walter Snow.

238. Indorsement Must Be of Entire Instrument.— An indorsement can not be made as to a portion of a negotiable paper. It must extend to the entire paper. An indorsement which purports to transfer to the indorsee, a part only of the amount payable will not operate as a negotiation of the instrument.

Illustration.— In a case where a note for $500 was indorsed, "Pay to John Lewis $400 out of this note," it was held that Lewis could not recover such amount from the maker.

239. (c) **Restrictive Indorsement.**— A restrictive indorsement is one which limits the negotiability of the paper to a particular person or purpose. The most common restrictive indorsement of an instrument is "for collection." Such an indorsement vests in the indorsee the authority of an agent for collection only and does not confer upon him any title to the paper.

240. (d) **Qualified Indorsement.**— A qualified indorsement is one which limits or extends the liability of the indorser. If one indorsing a note desires

to escape all further liability thereupon, he may indorse "without recourse."

On the other hand, if one indorses negotiable paper and wishes to make it specially attractive to the purchaser, he may extend his liability by waiving his right to demand, protest, and notice.

241. Indorsement without Recourse.— The liability of the indorser may be extinguished absolutely by indorsement in any of the following forms, written above the signature of the indorser: —

Without recourse.
Without recourse to me.
Without liability.

While indorsement in this form renders the paper of less value to the extent that it deprives it of the responsibility of the indorser, yet this is not evidence that there is anything wrong with the paper itself. The fact that paper is indorsed without recourse is not a sufficient circumstance to put an innocent purchaser upon inquiry. It is not notice of defense or defect. In other words, one may become a *bona fide* purchaser of paper indorsed without recourse.

242. Waiver of Rights by Indorsement.— The indorser has a right to be notified if paper upon which he is bound is not paid at maturity. He has also a right to insist that such paper shall be presented for payment when due. He has also a right to waive any right he possesses. Waiver may be made by indorsement in any of the following forms written above the signature of the indorser: —

Demand waived.

Protest waived.

Demand and protest waived.

Demand, protest, and notice waived.

To any of these indorsements, it is proper to add the words which constitute such indorsement special, thus: —

Pay to the order of Charles Henry, demand, protest, and notice waived.

Arnold Clinton.

When the words rendering the indorsement special are not used, the indorsement without recourse or with waived rights, standing alone, renders the paper transferable by delivery the same, so far as negotiation is concerned, as though it had been indorsed in blank.

243. Waiver.— It is a general rule that a right not expressly waived is retained. Waiver is absolutely limited to the thing waived. Thus, waiver of notice of non-payment is not waiver of demand, and it has been held that waiver of demand is not waiver of notice of non-payment.

244. (e) **Conditional Indorsement.**— Conditional Indorsement, as the term suggests, is one in which the liability of the indorser depends upon some condition precedent. The condition will generally be binding upon the purchaser.

Illustration.— Atkins indorsed a check as follows: "Pay to Charles Dudley upon his delivery to you for me of bond No. 247 of the Home Loan Association, dated Nov. 1, 1900, for the principal sum of $500, (Signed) Wm. Atkins."

The bank will be bound to observe the condition, and if it pays the check without inforcing compliance with such condition, the payment is unauthorized, and the bank can not charge the amount so wrongfully paid against its depositor.

245. The Payor Must Be Certain.— To render paper negotiable, it must emanate from a certain payor who is primarily liable. A person may, however, bind himself on a note by affixing his initials or his mark thereto, provided such intitials or mark are so affixed with the purpose of giving the paper legal force. Signing by mark is usually resorted to by persons who through illiteracy, or the result of accident, are unable to write. It is not necessary that one should be unable to write in order to make his signature by mark binding. Anyone may bind himself by signing by his mark, regardless of whether or not he can write. The law, being largely made by lawyers, is not specially critical about penmanship. The only difficulty with signatures made by mark is that they are not easy to prove; they do not identify themselves. When an instrument is signed by mark, it is always a safe practice to have it witnessed by one having knowledge of the facts. A note signed by mark may be witnessed in the following form: —

$300 Indianapolis, Ind., April 15, 1900.

One year after date, I promise to pay to James Mount, or order, Three Hundred Dollars, at the NATIONAL BANK of Indianapolis, Indiana, with interest at the rate of six per centum per annum.

For value received.

Witness: his
John Smith. Peter x Jones.
mark

246. The Payee Must Be Certain.—Certainty of payee is necessary to render the paper negotiable. Thus a writing to this effect: "I promise to pay $500 on demand. (Signed) Amos Wright," would not have the character of negotiability. The same has been held of paper in the following form: "Good for $100 on demand. (Signed) Samuel Franke."

Paper may be made payable to a fictitious payee or to bearer only, and such paper will be negotiable.

247. The Paper Must Be for the Payment of a Certain Sum of Money.—The amount must be certain and it must be in money. A note drawn for no certain sum, or a note payable in chattels, while generally transferable, is not strictly negotiable. Thus, an order for "such sums as may now be due to me," would not be negotiable. A note drawn, payable "in wheat at current market prices," would be non-negotiable, because not payable in money. Negotiable paper is treated as such only because it takes the place of money. Paper which does not express its obligation in terms of money is not negotiable.

248. The Time of Maturity Must Be Certain.— A note, draft, or other instrument payable at a date which is incapable of being reduced to certainty is not negotiable. A note made payable "when I shall marry" would not be negotiable, because it is not certain that I shall ever marry at all, but a note payable "six months after my death" would be negotiable, because it is certain that I shall die. So a note made payable "on demand" is regarded as certain, for human experience has demonstrated that demand is certain to be made, and, when it is made, the time of maturity is established.

249. Paper Payable on Contingency.—Similar to the rule above stated, and practically embraced by it, is the rule that paper, to be negotiable, must be payable at all events, and must not depend for its payment upon the happening of some uncertain event.

Illustration.— The following note was held non-negotiable because it depended for its maturity upon the happening of an uncertain event: —

$980. Boston, Mass., Oct. 1, 1812.

For value received, I promise to pay to the bearer hereof six months after date nine hundred and eighty dollars, provided the ship "Mary" arrives at a European port of discharge free of capture and condemnation by the British.

Samuel Ruggles.

250. In Some States Paper to Be Negotiable Must Be Payable in Bank.— It is always best to have commercial paper payable at a certain

place. This is not always necessary to negotiability, but, when this is required, it is just as essential as any other element of negotiability. Thus, in Indiana, a note to be negotiable must be drawn payable in bank, that is, it must be payable at some banking office.

251. The Words "Value Received."— The use of the words "value received" in promissory notes is sanctioned by the best usage, but neither their presence nor their absence is of any legal importance. In their absence, it is presumed that the paper would not have been issued without consideration, and the paper is said of itself to impart a consideration, while, on the other hand, the fact that these words have been used, will not prevent proof that there was no consideration given for the paper.

252. Antedated and Postdated Paper.— Negotiable paper may be antedated or postdated without impairing its validity. An innocent purchaser of such paper is protected to the same extent as though the paper bore the actual date of its issue.

253. The Date of Negotiable Paper.— While it is always preferable practice to date negotiable paper, yet the want of date will not invalidate it, and the date may be shown by verbal testimony. As a matter of good business practice, the paper should be dated at the time and place of its execution, and the date should be written out fully and plainly and should not be stated by the use of abbreviations. The abbreviation for January, for example, when written Jan., is frequently hardly distinguishable from

June, and this may lead to a mistake of five months or more in the computation of interest or in the calculation of the period of limitation. A very little ink, properly used, would save a great deal of annoyance in litigation.

Illustration.— Holt gave Richards a note dated Jan. 10, 1890. Richards sold the note to Watts, who, mistaking the abbreviation of January for the word June, permitted the note to remain without payment being made or suit brought until the 10th of June, 1896, on which date he sued Holt. Holt asserted that the paper, having run more than six years without payment, was outlawed. He proved that the note was executed in January instead of June, 1890. The court held that the note was barred by limitation, and so, by reason of having been misled by the use of an abbreviation, Watts lost the entire amount of his claim.

254. Omissions and Discrepancies.— The omission of a word or words which may readily be supplied will not usually impair the legality of the paper. Thus, "sixty after date," appearing in a note or draft, would be construed "sixty days after date," and, "I promise to pay one hundred ——— ," appearing in a note would be construed as a promise to pay one hundred dollars. The figures which usually appear on the margin of a note are merely for the purpose of assisting in the interpretation of the writing. When there is a variance between the written words and the figures, the figures will be disregarded and the writing will control.

Illustration.— The following was construed as a check for $200 only.

$250. Chicago, Ill., Dec. 30, 1899.

THE NATIONAL BANK of Illinois, pay to the order of Samuel Willard _____

Two Hundred _____ Dollars.

JOEL GEST.

CHAPTER IV.

THE RIGHTS, DUTIES, AND LIABILITIES OF THE PARTIES TO COMMERCIAL PAPER.

"When two persons are liable concerning one and the same thing, if one makes default, the other must bear the whole."—*Legal Maxim.*

255. Joint Makers.
256. Rights of Sureties.
257. The Rights of Joint Makers.
258. Joint Obligations.
259. Joint and Several Obligations.
260. The Duty of the Maker of a Note and of the Acceptor of a Bill of Exchange.
261. The Duty of the Payee of a Note or Bill of Exchange.
262. How to Bind the Indorsers of a Note Absolutely.
263. Presentation and Demand.
264. Days of Grace.
265. Computation of Time.
266. Sight.
267. Notice.
268. Service of Notice upon the Indorser.
269. The Reason for the Rule.
270. The Duty of the Indorser.
271. The Liability of the Indorser.
272. The Primary Liability of the Drawer of a Bill of Exchange.
273. Presentation and Dishonor of Bills of Exchange.
274. Acceptance.
275. Payment.
276. Protests of Foreign Bills of Exchange.
277. The Purpose of Protest.

278. The Liabilities of One Who Sells Paper Transferable by Delivery.
279. Express Warranties.
280. The Paid Obligation.
281. Checks Payable to Order May Be Made Receipts in Full.

255. Joint Makers.— When several persons join in signing a note *before its inception* they become joint makers as to the original payee and all subsequent holders of the paper, although, as among themselves, one or more may be the maker or makers, and the others merely sureties. As among themselves, each joint maker is liable for his proportionate share only; that is, if there were three joint makers, each would be liable to contribute one third of the whole amount of the obligation toward its payment. If, however, as among themselves, two were joint makers and one was surety merely, it would be the duty of the two joint makers to contribute one half each of the whole amount of the obligation toward its payment. But as to the payee and all subsequent holders of the paper, each of the original parties, regardless of the relations existing among the original parties themselves, is a joint maker and is liable for payment of the entire obligation.

Illustration.— Andrew, Bennett, Connor, and Dill executed a note to Evart. Andrew and Bennett received the proceeds of the note, while Connor and Dill signed as a matter of accommodation only and did not participate in the benefits of the transaction. When the note fell due, Andrew, Bennett, and Connor were insolvent. Dill was held liable for the

entire amount of the obligation, although he had never received any benefit from it.

256. Rights of Sureties.—A surety who has paid an obligation has a right to recover from his principal the full amount that he has paid as such surety.

Illustration.— Howard signed a note as surety for Williams. He afterward was obliged to pay the note in full. He brought suit against Williams, and was permitted by the court to recover judgment for the full amount paid.

257. The Rights of Joint Makers.—A joint maker who has paid a joint obligation in full has a right to recover from each of the other joint makers their proportionate share of the obligation.

Illustration.— As to third parties, sureties and joint makers of notes are equally bound, but as among themselves, the distinction between the liability of a surety and that of the joint maker may be illustrated as follows: —

Atwood, Bell, Cole, and Dane became jointly liable upon a note which Dane was obliged to pay. Now if Dane had been a joint maker, Atwood, Bell, and Cole would have been bound to contribute toward his reimbursement one fourth of the entire amount; but if Dane had been a surety, Atwood, Bell, and Cole would have been bound to contribute for his reimbursement one third each of the entire amount. In that case, Dane would have had the right to recover the whole amount he had paid from either Atwood, Bell, or Cole. When Dane had reimbursed himself, from the property of any one of these joint makers, such joint maker would have been entitled

to recover from the other two one third each of the amount so paid to Dane. In other words, as between the parties to the paper, Atwood, Bell, and Cole were each liable to each other for one third the amount of the obligation, and were each liable to Dane for the whole of the obligation, while Dane, as surety, was liable for no part of the obligation to Atwood, Bell, and Cole, although as to third parties he was equally liable with them for the whole amount.

258. Joint Obligations.— When the words of the promise are, "We promise to pay," or, "We jointly promise to pay," the obligation is joint. If suit is brought for the enforcement of such an obligation, all of the persons bound must be sued together; they can not be sued separately. A judgment against all of the joint debtors may be satisfied by levy on the property of all or any one of them.

259. Joint and Several Obligations.— A Several Obligation is one upon which each obligor is individually and separately liable. A Joint and Several Obligation is one in which each obligor may be held jointly with all the rest or separately and individually. The holder of a joint and several obligation must treat it as either joint or several. He may collect it of all, or of any one of the obligors. He can not, however, sue some of the obligors jointly and some of them severally. He must treat the obligation as wholly joint or wholly several.

An obligation in these words, "We jointly and severally promise," is joint and several. A promise in the singular number, signed by more than one

person, is both joint and several. Thus a note signed by Atwood, Bell, and Cole, containing the words, "I promise to pay," is joint and several.

260. The Duty of the Maker of a Note and of the Acceptor of a Bill of Exchange.— The duty of a maker of a note is the same as that of the acceptor of a bill of exchange. Each is liable unconditionally for the payment of the amount of the obligation when it appears in the hands of a *bona fide* purchaser. As between the maker and the payee, and as between the maker and any holder of the paper who has purchased it after its maturity, or who has purchased it with knowledge of defenses against it, or as against a holder who is not a purchaser for value, the maker of a note or the acceptor of a bill of exchange may urge such set-offs and defenses as he may have against the obligation.

Illustration.— Cady bought of Dennis a reaper which Dennis warranted perfect. The machine proved to be defective, and Dennis sued Cady upon the note given for the purchase price. Cady was permitted to defeat the note by proving that the reaper was absolutely useless.

If Dennis had sold the note to Ewing after it was due, or if Ewing had bought the note, having knowledge of the failure of the consideration, or for a price so inadequate as to have put him upon inquiry as to the validity of the note, the same defense would have been effectual against the note in the hands of Ewing. But if Ewing had bought the note in good faith, before its maturity, and for adequate value, and without knowledge of defenses against it, he

would have been entitled to recover the full amount from Cady, although the reaper was of no value.

261. The Duty of the Payee of a Note or Bill of Exchange.— When a payee transfers a note or bill of exchange by indorsement, he becomes an indorser, and it may become his duty to pay the obligation at its maturity, in case the maker does not. Every subsequent indorser of the paper has a like duty, and is liable to a like extent to all subsequent holders. *The liability of the indorser is conditional*, and does not arise unless the holder of the paper at its maturity complies with the conditions strictly.

262. How to Bind the Indorsers of a Note Absolutely.— The conditions of the indorsement are either expressed or implied, or are both expressed and implied. The indorser may write out the terms of his indorsement in full or in part, or he may merely affix his name to the back of the paper. In the latter case, the law attaches certain implied conditions to his liability as fully as though such conditions were written at length above his signature. These implied conditions, if reduced to writing, would read substantially thus: "If the maker of this note does not pay it at maturity, I promise to pay it, provided the holder at such time duly presents the note to the maker and demands payment from him, and, further, in case the maker refuses payment, gives me notice that payment has been refused, and that he looks to me for the same."

263. Presentation and Demand.— A note must be presented for payment at the proper time

and place. The proper time for presentation is the day of maturity. The proper place for presentation is the place named in the note, and presentation at such place is sufficient. But if the note is not made payable at any particular place, it should be presented for payment at the place of business of the maker if he has one, or, if he has no place of business, then to him personally wherever he can be found, or, if he can not be found, then at his last place of business, or at his last place of residence. If the maker has absconded, demand will be excused, provided, after diligent search and inquiry, it is impossible to find him. If the maker die, demand should be made upon his personal representatives, if any, and if he have none, then upon such persons as have his business in charge.

264. Days of Grace.— In many States a delay of three days is allowed after maturity of negotiable paper before payment can be enforced. Thus, a note falling due one year after Jan. 2, 1899, would have been demandable Jan. 5, 1900, in States where grace is allowed. The maker would have until the close of business hours of the last day of grace for payment. A suit begun before the expiration of the last day of grace would be premature, and would be dismissed by the court. Demand should be made upon the last day of grace, and an earlier demand would be insufficient.

If the last day of grace falls on Sunday, or on a legal holiday, demand should be made on the day preceding. If Sunday and a legal holiday come together upon the last two days of grace, demand

should be made upon the first day of grace. In cases where no grace is allowed, if a note fall due on Sunday, or on a legal holiday, demand can not be properly made until the day next thereafter.

No grace is allowed on checks, or, in general, upon demand paper. (See Appendix.)

265. Computation of Time.— In connection with demand of payment, it becomes important to know at what time an obligation falls due. The term "months" means calendar months, regardless of the number of days. Thus, a note given Feb. 2, 1899, due three months after date, would mature May 2, 1899, and if in a State allowing grace, would be demandable May 5, 1899. When a note is made payable a certain number of days after date, sight, or demand, the day of date, sight, or demand is excluded, and the day of maturity is included. Thus, if in the above case the note were made payable ninety days after date, the note would be demandable May 3, 1899, or May 6, 1899, if grace were allowed.

266. Sight.— By sight is meant the presentation of a draft for acceptance. Presentation is made by presenting the draft to the view of the drawee, who has thereafter twenty-four hours in which to examine his books before making acceptance. If, at the end of that time, he declines to accept, the draft may be protested for non-acceptance.

267. Notice.— After presentation, demand, and non-payment of a note, but one step further is necessary to charge the indorser with liability, and that step is the service of notice of such presentation,

demand, and non-payment upon such indorser. All parties to the paper, except the maker and such indorsers as have waived it, are entitled to notice. This notice need not be in any particular form, and will be sufficient in any case if it unmistakably calls the attention of the indorser to the fact that the note has been duly presented and payment demanded and refused, and that the holder looks to the indorser for such payment.

A letter addressed by the holder of a note to the indorser, describing the note, and stating that, upon presentation and demand of payment made upon the maker on the day of maturity, payment was refused, and that the holder looks to such indorser for payment, will be held sufficient in form.

268. Service of Notice upon the Indorser.— Notice may be served by delivering it to the indorser personally, or by depositing it in the mail with postage prepaid for transmission to him. It has been held that deposit of a letter containing notice in a street letter box forming a part of the postal system is sufficient. When the maker and the indorser reside in the same place, it is best to cause notice to be served upon the indorser personally. In all other cases, service by mail is preferable. The notice may be sent either to the indorser's place of business or to his residence.

Notice should be given to indorsers residing in the place where demand is made, and should be mailed to those residing elsewhere, not later than the day after payment is refused. Sunday and any legal

holiday are to be excluded from the time within which notice must be given. When circumstances render it impossible to give notice within the time named, as where there is no post office or facilities for sending mail, the exercise of the highest diligence possible under the circumstances will be sufficient. The fact that a duly mailed notice is afterward miscarried will not invalidate the notice.

269. The Reason for the Rule.— Actual knowledge on the part of the indorser that the note has been presented and payment demanded and refused, will not do away with the necessity of notice. In every case, regardless of the facts, *the want of notice is conclusively presumed to damage the indorser.* The reason for this is twofold: First, the undertaking of the indorser, being conditional, the holder is compelled to see that the condition is complied with, or the indorser will be discharged. Second, the indorser is entitled to immediate notice that his principal has failed to pay the obligation, and that he himself will be held to pay it, for it is a matter of common experience that makers refuse payment of their paper only when they are in failing circumstances, and the indorser is entitled, as a matter of right, and of law, to the earliest notice of the circumstances of his principal, that he may take prompt means to secure himself for such money as he may be required to advance before his principal becomes utterly worthless, and before the procurement of such security becomes impossible.

Illustration.— Anthony indorsed Breckenridge's note which he sold to Comstock. At the maturity of the paper, Breckenridge refused payment, and Comstock failed to give Anthony notice. Comstock gave Breckenridge several extensions of time without Anthony's knowledge. At the time the note fell due, Breckenridge was financially solvent, but he afterward became insolvent. Anthony supposed the note had been paid, as he had received no notice to the contrary. After Breckenridge became insolvent, Comstock attempted to hold Anthony for payment. The court held that it would be unjust to permit Comstock to mislead Anthony by neglecting to notify him of Breckenridge's default, and then to hold Anthony for payment after Breckenridge had become so involved in debt that it would be impossible for Anthony to reimburse himself out of Breckenridge's estate.

270. The Duty of the Indorser.— While, in practice, the holder of paper usually notifies *all* indorsers, he has a right to select any one or more of them. All indorsers not notified, and being subsequent to those notified, are discharged.

Illustration.— Gregory was the holder of a note on which Akey, Baldwin, Collins, and Day were indorsers in the order named. Upon demand and nonpayment, Gregory notified Collins only. It was held that Day was thereby discharged for want of notice.

Each indorser has one day to notify such indorsers prior to himself, as he may desire to charge with liability. Thus, in the above case, Collins might send notice to Akey and Baldwin, or either of them. If he sent notice to Akey, and not to Bald-

win, Baldwin would be discharged. If he sent notice to Baldwin and not to Akey, Akey would be discharged, unless Baldwin, within one day after receiving notice, gave notice to Akey. If Baldwin failed to give Akey notice, he could look only to the maker of the note for re-imbursement; but if he gave Akey due notice, he could look both to Akey and to the maker. If, in the case first stated, Gregory had given notice to Day, Day might in turn have notified Collins, and Collins, Baldwin, and Baldwin, Akey, in which case all of the indorsers would have been bound. The rule is that each indorser is entitled to the security afforded by the indorsement of all preceding him, but must at his own peril see to it that all preceding him are charged with liability by due notice.

271. The Liability of the Indorser.— When an indorser is charged with liability, it is his duty to pay the obligation to the holder, or to the indorser next subsequent to himself who has previously paid the obligation. It then becomes his right to collect the amount so paid from any indorser preceding him who has had due notice.

Illustration.— Barnes, Clinton, Doll, and Eli were indorsers to a note made by Arthur. At maturity Arthur refused payment. All of the indorsers were charged by proper notice. Eli paid the holder of the paper the full amount and recovered it from Doll; Doll recovered from Clinton; Clinton recovered from Barnes, and Arthur, the maker of the note, being worthless, Barnes had no further recourse and was obliged to sustain the loss.

272. The Primary Liability of the Drawer of a Bill of Exchange.— The primary liability of

a drawer of a bill of exchange is the same as that of the maker of a note in one case only; namely, when he draws upon a payee in whose hands he has no funds.

Illustration.— Billings drew a check on the bank of Hanover, in favor of Caldwell. Caldwell delayed an unreasonable time before presenting the check for payment, and during the time of this delay the bank on which the check was drawn, failed. It was shown that Billings had no funds in the bank at the time he drew the check, or thereafter, sufficient to meet the demand. It was held that Billings was not excused from liability upon the check by reason of Caldwell's delay in presenting it.

If Billings had possessed funds in the bank sufficient to meet the check, and if during Caldwell's delay in making presentation of the check the bank had failed, Billings would have been discharged from liability, and Caldwell would have been obliged to bear the loss.

273. Presentation and Dishonor of Bills of Exchange.— The above illustration leads to the correct conclusion that the liability of the drawer of a bill of exchange depends, in part, upon the diligence of the payee in presenting bill for payment. It is the duty of the payee to present the bill to the drawee for acceptance within a reasonable time. What constitutes a reasonable time depends upon the situation of the parties and the character of the paper. Failure to present a bill within a reasonable time discharges the drawer and also the indorsers, if any.

Illustration.— Wilson gave Hartwick a draft on Anthony, indorsed by Duluth. Hartwick delayed

presentation for one week, during which time Anthony failed. Both Wilson and Duluth were discharged from liability by Hoyt's unreasonable delay, and Anthony, having become insolvent, Hoyt was obliged to sustain the loss.

Thomas gave Harvey a check upon the bank of Rothchild. Now the general rule is, that a check must be presented or forwarded for payment not later than the close of business hours on the date following its date of delivery. In this case the check was given in a rural district, twenty miles from the place of payment, and not in time to reach the bank on that day. Unavoidable business engagements prevented the holder from presenting it on the next day, and the following day was Sunday. On Monday morning the check was placed in a local bank to be forwarded for collection, and on the same morning Rothchild's bank failed. It was held that under the circumstances the delay was not unreasonable, and Thomas was held for the payment of the check. From these illustrations it may be readily gathered that the question of what constitutes a reasonable time for presentation depends upon the circumstances surrounding each case.

A bill of exchange may be presented for two separate purposes: once for acceptance, and again for payment. In like manner it may be dishonored in two ways: First, by non-acceptance, and second, by non-payment.

274. Acceptance.—A drawee incurs no liability upon paper until he accepts it. By acceptance he promises to pay the obligation, according to its terms. A drawee is entitled to twenty-four hours within which to accept a draft. Failure to make acceptance within that time amounts to dishonor of the paper.

When a bill is drawn payable on demand, acceptance is properly made by payment. But where a bill is drawn payable a certain number of days after sight, acceptance and payment are two distinct acts. In such case, either failure to accept or failure to pay at maturity would entitle the drawer to notice of such failure.

In States allowing days of grace on sight and demand paper, presentation of such paper for acceptance is made on the day of maturity, and presentation for payment is made on the last day of grace. Thus, a draft dated Feb. 10, 1900, payable at sight, should be presented within reasonable time for acceptance, and after acceptance, the acceptor would be entitled to three days' further delay (in States permitting grace upon sight paper) before demand of payment could properly be made.

275. Payment.— When a bill of exchange has been accepted, it is the duty of the holders at maturity to present it for payment. And it is the duty of the acceptor to pay it. If he fails to pay, notice must be given to the drawer and the indorsers in the same manner as notice of the non-payment of a promissory note is given.

276. Protest of Foreign Bills of Exchange. — The duties of the holder of a *foreign* bill of exchange embrace one act more than presentation, demand, and notice; namely, Protest.

A protest is merely the certificate of a Notary Public, setting forth that he has presented the bill, describing it, and that he has demanded payment

thereof, and that such payment was refused. The certificate of protest is not necessarily executed at the time of dishonor. In cases in which protest is necessary, the indorser is entitled to notice of protest as well as to notice of presentation, demand, and dishonor. It is not necessary to serve copies of the certificate of protest, but merely notice that the protest has been made.

It is customary, however, to serve copies of the certificate of protest together with the notice.

277. The Purpose of Protest.— The purpose of protest is the procurement of convenient evidence of the fact of the presentation and dishonor of a foreign bill of exchange. The Notary's certificate of protest, under his official seal, is evidence of these facts, and hence the practice of protesting foreign bills of exchange has been adopted as a matter of convenience. It is quite customary to protest notes, checks, and drafts, regardless of whether they are foreign or inland. While protest is unnecessary in the case of inland paper, and in the case of notes, whether foreign or inland, the practice of protesting *all* paper is a safe one.

278. The Liabilities of One Who Sells Paper Transferable by Delivery.— One who disposes of paper *payable to bearer* is not without liability. The transfer of paper by mere delivery carries with it certain implied warranties on the part of the vendor. The implied warranties of the vendor of such negotiable paper are as follows: —

(a) The vendor warrants that his title is good, and that he has a right to sell the paper;

(b) The vendor warrants that the signature of the maker of the note is genuine;

(c) The vendor warrants that the paper is made by parties competent to contract;

(d) The vendor warrants that the paper has by no means become worthless;

(e) The vendor warrants that the paper is of the kind and description that it purports to be.

These are all *implied* warranties. They come into existence without any special words or understanding, and by operation of law. In case any of them are violated, as for example, if the paper proves to be a forgery, the vendor may be sued, not on the paper itself, *but on the implied warranty.*

279. Express Warranties.— An express warranty supersedes all implied warranties. If there is an express warranty of the note in any particular, there are no implied warranties whatever. All of the implied warranties are merged in the express warranty.

280. The Paid Obligation.—When a note or bill of exchange has been paid, it should be taken up, marked paid, and placed on file by the maker. A note in the hands of its maker is *prima facie* evidence of payment of the same. If, after payment, a note is reissued, it may be collected of any of the parties to it by a *bona fide* purchaser. A paid note in the hands of its maker operates as a receipt.

281. Checks Payable to Order May Be Made Receipts in Full.— If a creditor, to whom a check containing recital that such check is payment in full of a certain claim, receives such check and

cashes the same, the paid check will constitute a receipt in full, and will be evidence of the satisfaction of the claim.

Illustration.— A check in the following form when presented by the creditor, and paid, would constitute a receipt in full of the demand: —

$500. Battle Creek, Mich., March 1, 1899.
Merchants' Savings Bank.
Pay to the order of Frank J. Kellogg Five Hundred Dollars, in full payment and satisfaction of his distributive share of the estate of Thomas Wheeler, deceased. William Winkle.

In like manner a recital after the word "Dollars" in the above check, setting forth that the payment was "in full payment of all accounts to date," would constitute the check, when paid, a receipt in full of all accounts between the drawer and the payee of the check.

CHAPTER V.

SECURITIES.

"Surplusage does no harm."—*Legal Maxim.*

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282. Definition.— A security is (I) an instrument (II) or lien which renders certain the performance of a contract, or the recovery of damages for its non-performance.

283. (I) Instruments Commonly Used as Securities.—The instruments most commonly used as securities are (a) Guaranties, (b) Other Collateral Securities, and (c) Bonds.

284. (a) Guaranties.— A guaranty is a collateral undertaking to perform the obligation of another in case he does not perform it himself.

285. Guaranty Distinguished from Suretyship.— Suretyship is a primary obligation; guaranty is a secondary obligation. Suretyship exists from the beginning of the life of an obligation; guaranty is a collateral security added to the obligation after its inception. A surety is treated by third parties as a joint obligor; a guarantor is not treated as a joint obligor, and is liable only when the original obligor refuses or neglects performance. Suretyship is an undertaking that the debt shall be paid; guaranty is an undertaking that the debtor shall pay.

286. The Negotiability of a Guaranty.— A general guaranty indorsed upon a negotiable instrument is usually held to pass with the instrument. A guaranty executed separately from the instrument guaranteed is generally held not to pass by the assignment of the instrument guaranteed. The law on this subject is not uniform.

287. Guaranty of Payment and Guaranty of Collection.— A guaranty is usually strictly limited to the purpose expressed. If it be a guaranty of payment, its effect will be that, if the original obligor does not pay the obligation, the guarantor may then be held. If the guaranty is of *collection*, the liability of the guarantor does not become fixed until the holder of the obligation has exhausted his legal remedies against the original obligor. By this it is meant that, in the case of a guaranty of collection, the holder of the primary obligation must bring suit upon it, recover judgment, issue execution, and have the execution returned unsatisfied, before he can proceed against the guarantor.

288. Form of Guaranty of Payment of a Note.— The guaranty of payment of a note may be in the following form:—

For value received, I hereby guarantee the prompt payment at maturity of both the principal and interest of the within note. WILLIAM WIRT.

289. Form of Guaranty of the Collection of a Note.— The following form of guaranty of collection may be used:—

For value received, I hereby guarantee the collection of both the principal and interest of the within note.
WILLIAM WIRT.

290. The Remedies of the Guarantor.— Whenever the liability of a guarantor becomes fixed by default on the part of the principal, he may pay

the obligation and immediately proceed against his principal for the recovery of the amount so paid.

Illustration.— Jones guaranteed payment of a note made by Hoyt. When the note fell due, Hoyt defaulted and Jones was obliged to pay it. Hoyt afterward was found to be solvent, and Jones thereupon sued him and recovered back the amount he had advanced.

291. (b) Collateral Securities.— It is a common practice for the maker of a note to deposit with the payee, together with his note, and for the purpose of strengthening the payee's security, other commercial paper, the property of the maker, such as policies of insurance, or promissory notes, or drafts. If the maker defaults at time of payment, it becomes the right of the payee to collect such funds as may fall due or be realized upon these collateral securities, and, after paying the cost of such collection, and satisfying the obligations secured, to then re-deliver to the maker such part of the collateral as remains unused.

292. (c) **Bonds.**— A bond is a sealed undertaking to perform a certain obligation therein specified. It is usually executed by one or more principals and by one or more sureties. There are two classes of bonds, Commercial Bonds and Indemnifying Bonds.

293. Commercial Bonds.— Commercial bonds are such as are issued for the purpose of raising money, by persons, corporations, municipalities, and governments. The bonds issued by private individuals or private corporations are usually secured either

by mortgage, guaranty, collateral security, or by all of these. Municipal bonds are such as are issued by cities for the purpose of raising money for public improvements. They are not usually secured by anything other than public credit. State and National Bonds are also frequently issued, and, like the other classes of bonds named, form a stable and important kind of commercial paper.

294. The Validity of Corporate Bonds.— The validity of the bonds of either public or private corporation depends upon the authority of the corporation to issue such bonds and the regularity of proceedings by which such issue is directed.

If a corporation issue bonds, having no authority so to do, the bonds are void. The purchaser of bonds should exercise great care in ascertaining, first, that the corporation had authority to issue such bonds and second, that the proceedings under which such bonds were issued were all regular and lawful.

295. Indemnifying Bonds.— An Indemnifying Bond is usually in the alternative. It usually provides that a certain act shall be performed, or, that if such act is not performed, a certain sum of money shall be paid the obligee as damages. The bond usually begins by reciting that the obligors are jointly and severally bound to the obligee for the payment of a certain sum of money, and then provides that if the act, the performance of which is sought to be secured by the bond, is performed, the obligation shall be void, and of no further effect, but that otherwise it shall remain in full force.

296. (II) Liens.— A lien is defined to be a hold or claim which one person has upon the property of another as security for payment of some debt or charge. Liens are created in two ways, (a) by the act of the parties, and (b) by operation of law.

297. (a) Liens Created by the Act of the Parties.— For practical purposes property may be divided into two classes, Personal property and Real property. Personal property consists of contracts, evidence of debt, and things movable. Real estate consists of land and things immovable. Liens covering property are naturally divided, according to the character of the property itself, into liens upon chattels and liens upon real estate. Liens created by the act of the parties themselves are usually in the form of mortgages, of which there are two classes, chattel mortgages and real estate mortgages.

298. Mortgages Defined.— A mortgage is a contract creating a lien upon property for the purpose of securing performance of an act, which when performed, discharges the lien. The lien created by a mortgage may be enforced, upon default of the mortgagor, by a proceeding called foreclosure. The method of foreclosure may be expressed either by the statute of the State, or by the terms of the mortgage itself. The method of foreclosure provided by the terms of the mortgage must be strictly followed, and the power of sale granted the mortgagee must not be exceeded.

299. The Parties to a Mortgage.— The person giving a mortgage is called a mortgagor. The

person to whom the mortgage is given is called the mortgagee. If the mortgagee transfers the mortgage to another by assignment, the person receiving the mortgage is called the assignee. The assignee of a mortgage may foreclose it in his own name, and may exercise any other right or remedy possessed by the mortgagee.

300. Chattel Mortgages.— Mortgages of personal property are called chattel mortgages. The laws governing this class of liens are not uniform, each State having its own statutes on the subject. (See Appendix.)

301. The Form of a Chattel Mortgage.— A chattel mortgage may be either verbal or written. A verbal chattel mortgage would usually be of no effect unless accompanied by immediate possesion of the mortgaged property on the part of the mortgagee. The law strictly favors such possession, as it amounts to open and visible notice of the lien claimed, so that all the world is warned thereof. When immediate possession of the mortgaged property is given the mortgagee, it is not necessary that the written mortgage, if one is made, be filed or recorded. The purpose of filing or recording is merely to give the public notice of the existence of the chattel mortgage lien, and, as this notice is much more thoroughly given by possession of the goods on the part of the mortgagee, artificial notice effected by filing or recording the mortgage becomes unnecessary.

302. Filing or Recording.— When an original instrument, or a copy thereof, is deposited with the proper officer, it is said to be "filed." When the

contents of an instrument are copied into a permanent record book kept by the proper officer, the instrument is said to be "recorded." The laws of some States provide that chattel mortgages shall be filed in certain offices. The laws of other States provide that they shall be recorded. The laws of still other States provide that they shall be both filed and recorded. The purpose of filing or recording has already been explained. (See Appendix).

303. Mortgages Withheld from Record.— It is a common occurrence for one giving chattel mortgage to request that the same be not filed or recorded, as the case may be, for fear of its effect upon the credit of the mortgagor. This apprehension arises from the fact that creditors are almost invariably alarmed when a debtor gives a chattel mortgage on his property. They regard such an act as evidence that the debtor is hard pressed, or that he is guilty of mismanagement, and, as a rule, creditors usually, under such circumstances, immediately resort to active measures for the collection of their claims. Thousands of solvent men have been wrecked by the sudden destruction of their credit caused by the ill-advised filing of a chattel mortgage. The consequence is that mortgagors prefer, as a general thing, to have the mortgages they give, kept in secrecy. While this is advantageous to the mortgagor, it is very dangerous to the rights of the mortgagee, for the reason that as to those who extend the mortgagor credit after the unfiled or unrecorded mortgage is given, such mortgage is absolutely void.

304. Validity of an Unfiled or Unrecorded Mortgage as Between Parties.— As between mortgagor and mortgagee, a mortgage which has not been properly filed or recorded, remains valid until discharged, or barred by limitation. As between parties to it, the mortgage remains in force without renewal.

305. Priority of Lien.— The general rule is that the first lien must be first satisfied. If then there is any property left, it will be used for the satisfaction of the second lien, if any, and so on until all of the liens are satisfied, or all of the property is exhausted. It becomes important, in view of this, to be able to ascertain which liens are first, which second, which third, and so on. In general, the first filed or first recorded has priority over all others, but to this rule there are many exceptions.

(a) If a mortgage, although recorded first, is made expressly subject to another mortgage recorded thereafter, such other mortgage, although not filed so soon, will take priority over the mortgage made expressly subject to it.

(b) Actual notice of the existence of a prior mortgage is generally held to be as binding upon a subsequent mortgagee as though the notice were afforded by filing or recording such prior mortgage, and in such cases, one who takes a mortgage with full knowledge of the existence of the prior lien takes it subject to such prior lien, although the same has not been properly filed or recorded.

(c) In many jurisdictions a mortgage given as

security for a pre-existing debt, can not, though filed at once, be allowed priority over the previous mortgage not filed so soon.

Illustration.— Reynolds was a retail grocer, and owed Whitcomb a bill which had been due for some time. In order to procure further advance of credit from one Riley, Reynolds executed Riley a chattel mortgage on his stock of goods, with the understanding that Riley was not to file the same. A short time afterward he executed another mortgage on the same goods to Whitcomb to secure the pre-existing debt owed Whitcomb. Whitcomb immediately filed his mortgage, and Riley thereafter filed his. Whitcomb then took possession of the goods, claiming, that, because his mortgage was filed first, it took priority over Riley's mortgage, although Riley's mortgage was executed first. The court held that Riley's mortgage retained its priority, the reason being that, as between the parties, and in point of time, Riley's mortgage was and was entitled to be a first lien, and Whitcomb's mortgage was and was entitled to be in point of time, a second lien, and Whitcomb had suffered no damage by reason of Riley's mortgage having been withheld from record, as he had extended Reynolds no credit based on the misapprehended fact that Reynolds's goods were clear from incumbrance, the credit extended by Whitcomb to Reynolds having been given before the mortgage to Riley was executed.

306. Renewal.— In some States, it is provided that, after a certain time, a chattel mortgage shall cease to be notice of a lien unless it is renewed. This is usually accomplished by making and filing with the proper officer an affidavit executed by the

mortgagee, or his agent, stating the name of the owner of the mortgage, and the amount remaining unpaid thereupon. Such renewal is not necessary as between mortgagor and mortgagee, and, so far as they are concerned, the lien will remain in force without such renewal until the obligation is discharged either by performance or limitation.

307. Mortgages on Stocks of Goods.— In some States, a mortgage upon a stock of goods which remains in the possession of the mortgagor is valid. In other States, such a mortgage is void. Before the enactment of the National Bankruptcy Law, the popular method of failing in business in States where mortgages upon stocks of goods and additions thereto remaining in the possession of the mortgagor were valid, was by means of chattel mortgages, and even yet, when the indebtedness of the mortgagor is insufficient to bring him within the operation of the bankruptcy law (that is when his total indebtedness is less than $1,000), this method of failing is employed by dishonest debtors. This fraud is perpetrated by means of the debtor executing a mortgage to some friend, relative, or other person in collusion with him (the consideration of which is nominally large, and actually fictitious), the mortgagor remaining in possession, and selling his goods under cover of the mortgage, appropriating the proceeds wholly or in part to his own use. The creditors, not being able to prove the collusion and the fraud surrounding the transaction, and not being able to prove the want of consideration for the mortgage, generally desist from

making levies upon the mortgaged goods, preferring rather to lose the amounts they have involved than to expend still further sums in what often proves to be an unsatisfactory class of litigation.

308. Mortgages of Property to Be Acquired. — Where a mortgage is given upon a stock of goods which is to remain in the possession of the mortgagor to be sold in the regular course of trade (in a jurisdiction where such a mortgage is valid) the mortgagee should see to it that the mortgage covers all subsequent additions made to the stock during the life of the mortgage. If he fails to do this, a second mortgage covering the same stock, and including additions to be made thereto, will preclude the first mortgagee from holding the new goods added. The result will be that he will be obliged to content himself with the old and shelf-worn goods, which are of the least value, while the fresh and valuable goods subsequently added to the stock will fall to the second mortgagee.

Illustration.— Davis executed a mortgage to Vary covering an old stock of goods, and omitted to include subsequent additions thereto. It provided that Davis was to remain in possession of the goods, selling the same in the regular course of trade. Afterward, Davis executed a second mortgage to Hill, covering subsequent additions to the stock. Davis remained in possession and sold the more desirable part of his original stock, and made additions of new goods from time to time. Vary finally determined to foreclose his mortgage, and attempted to hold the entire stock of both new and old goods. The court

determined that Vary was entitled to possession of such goods only as were covered by his mortgage, viz., the original stock, or so much as remained thereof, and Hill was permitted to take the new goods by virtue of his second mortgage.

309. Foreclosure.— The method of foreclosing a mortgage is designated by the mortgage itself, and the power of sale granted in the mortgage must be strictly pursued. Foreclosure is usually accomplished by the mortgagee reducing the mortgaged property to his possession, and giving public notice of the items thereof, and of the time and place of selling the same, and by making public sale of such goods, or of sufficient thereof to satisfy his claim, together with the costs of foreclosure, at the time and place advertised, or at some later time to which the sale is, for good reason, adjourned. When a sale is adjourned, it is generally necessary to post the notices of the adjournment in the same place and manner in which the original notices of sale were posted. A sale may be adjourned for the reason that there were no bidders present, or for any other sound reason tending to materially lessen the amount for which the goods can be sold. Upon sale, the mortgagee may become a purchaser, provided he becomes such fairly and in good faith.

Illustration.— Henry, a mortgagee, advertised the chattels of Wells for sale, under a chattel mortgage at a certain time and place. The goods were of such a nature that they would have been seriously damaged by being publicly exhibited in the storm that prevailed, during all of the day named for the

sale. The sale was duly called by Henry at the time and place mentioned in the notice of sale, but no bidders were present. He thereupon adjourned the sale to another date, and attached notices of such adjournment to the original notices posted according to law. It was held that the adjournment was justified by the circumstances, and that the sale made on the adjourned day was valid.

310. Equity of Redemption.— The right to redeem from the lien of a mortgage is called the equity of redemption. Redemption is effected by performing the mortgage obligation. The equity of redemption in a chattel mortgage is extinguished by foreclosure sale.

311. Bills of Sale.— A bill of sale is a written transfer of the title to personal property. Bills of sale are, however, frequently used as conditional conveyances of property for the purpose of security. When a bill of sale is executed as security, and the title therein conveyed is subject to defeat by the performance of some act, the bill of sale will be construed and treated by the courts as a chattel mortgage, even though by its own express terms it is an absolute contract of sale. Verbal testimony will be admitted in a court to show that a bill of sale, absolute on its face, was intended by the parties to operate as a chattel mortgage. When one acquires property under a bill of sale operating as a chattel mortgage, title does not vest in him until he has foreclosed his bill of sale and bid in the property. A bill of sale operating as a chattel mortgage should be

filed or recorded in the same manner as a chattel mortgage.

312. Description of Property under Mortgage.— The description of the mortgaged property should be specific and complete. For example, if a horse is described, the mortgage should specify the color, sex, and approximate age of the animal, together with its name, if any, and such other distinguishing peculiarities as will make it possible to identify it by reference to the mortgage, and without recourse to other sources of information for identification. If a stock of goods is described, it is best to have in, or annexed to, the mortgage an itemized inventory of the stock. While such particularity of description is the best practice, the more common practice is much more loose and less painstaking. The courts generally hold that if the mortgaged property can be identified by the description in the mortgage, together with assistance from sources other than the mortgage, the description will be sufficient. It is evident, however, that circumstances may easily arise whereby no assistance in identification outside the terms of the mortgage itself can be secured, and it is under these circumstances that fullness of description becomes especially valuable.

Illustration.— The description of a horse in a chattel mortgage may be properly made in a form somewhat like the following: —

"One black mare, about four years old, known by the name of Maggie, and being about fifteen hands high, having a white left hind foot, and a white star on forehead."

313. The Possession Clause.— It is common for mortgages to contain a clause which permits the mortgagee at any time when he may deem himself insecure, to immediately take possession of the mortgaged property. This clause has been repeatedly sustained by the courts. While the mortgagee is the sole judge as to whether or not he deems himself insecure, he must not exercise this right to take possession before the mortgage is due, without reasonable cause and so arbitrarily that it will amount to a fraud upon the mortgagor. It is common for mortgages to provide that, upon possession being taken by virtue of the insecurity clause just mentioned, the mortgagee may immediately proceed to foreclose the same by a sale of the mortgaged property, whether the debt had then become due or not. In case this provision is not made in the mortgage, it will generally be necessary for the mortgagee to retain the property until the mortgage falls due by its original terms, before he can proceed to sale. As this retention of the mortgaged property is often expensive and inconvenient, the better practice is to provide by the terms of the mortgage that whenever possession is taken of the mortgaged property, either by reason of default in payment, or under the insecurity clause, the moneys secured by the mortgage shall immediately fall due and the mortgagee may forthwith proceed to foreclosure and sale.

314. Mortgages of Real Estate.— A mortgage of real estate is a conditional conveyance or lien, subject to extinguishment by the performance of the condition which it is given to secure. The

condition is usually the payment of a certain sum of money at a certain time and place, with a certain interest, in the mortgage specified.

315. Deeds Operating as Mortgages.— We have seen that an absolute bill of sale may operate as a chattel mortgage; so a deed, absolute on its face, may be shown to be a real estate mortgage. When a deed is given for the purpose of security only, and with an agreement that the property shall be reconveyed when certain conditions have been performed, such deed will be construed as a mortgage, and the title to the property therein described does not vest absolutely in the grantee until default is made and the lien has been foreclosed and the lands bid in by the mortgagee. Nothing is gained by receiving a conveyance in this form, as, while it confers none of the advantages arising out of a deed, it carries all of the hardships to the grantee imposed by a mortgage.

It is common, for one who finds himself about to lose property under a mortgage, to execute to the mortgagee a quit claim deed of the mortgaged property. If, at the time of the execution of such deed, an agreement is made, either in or apart from the deed, that the same shall be void, or that the property shall be reconveyed in case the grantor shall, within a given time pay the mortgage debt, such deed amounts to a mortgage only, and must be foreclosed to bar the grantor's equity of redemption.

The proper course to be pursued, where it is desired to give the mortgagor an opportunity to

recover his property by payment for the same, is to accept from him an absolute deed, and then, upon a new consideration ($1.00 for example) to execute to him a contract, granting him an option for the repurchase of the property within a time and at a price in said contract specified.

316. The Description of the Mortgaged Property.— The description of the real estate sought to be encumbered by a mortgage should be accurate. It is not always safe to follow the description set forth in the deed under which the mortgagor holds his title. It may be that such description is erroneous, and he may hold some portions of the lands to be mortgaged by claims arising independent of the deed; for example, a man might hold a part of his farm by virtue of a deed, and he may hold another part of it under a title, arising through adverse possession. If there is any doubt about the description, it would be well for the mortgagee in every case, before accepting a mortgage, to insist that a survey be made by a competent surveyor, and that an accurate description of the property sought to be mortgaged be secured. In general, a description sufficient for the purpose of a deed will be sufficient for the purpose of a mortgage.

317. A Combined Real Estate and Chattel Mortgage.— It sometimes occurs that a lien both upon real estate and personal property is created under and by virtue of one and the same instrument. In such cases, the mortgage should not only be recorded as a real estate mortgage, but it should be

also filed or recorded as is required by the law on particular jurisdiction for the filing or recording of a chattel mortgage.

318. Insurance Clause.— When a real estate mortgage is given upon property whereon buildings are to be or have been erected, it is customary to add to the mortgage a clause providing that the mortgagor shall at his own expense cause such buildings to be insured for the benefit of the mortgagee by insurers, and for an amount to be approved by the mortgagee, and that in case the mortgagor shall neglect so to do, the mortgagee may at his election treat such failure as a default upon the mortgage and forthwith commence foreclosure proceedings, or, if he so elects, procure instead such insurance as he deems necessary, and add the premiums paid therefor to the principal sum secured by the mortgage.

319. Tax Clause.— It is frequently found advantageous to provide in the mortgage that the mortgagor shall pay all the taxes assessed upon the mortgage, whether as an interest in real estate or as personal property, and that such payment of taxes shall not be considered as a payment of interest. The tax laws of the several States are being so constantly revised that it is always safe for the mortgagee to anticipate that his mortgage is likely to be taxed in one form or another before it is paid, even though at the time the mortgage is executed it is not subject to such taxation. Provisions of the kind above mentioned are usually agreed to by mortgagors, and are generally sustained by the courts.

320. Power of Sale.— Every mortgage should contain an express statement of the conditions under which it may be foreclosed, and should confer upon the mortgagee express power to sell the mortgaged premises upon the arising of such conditions.

321. Costs and Attorney Fee Clause.— Every mortgage should contain provisions rendering the property mortgaged liable for all costs of foreclosure, as well as for the lawful attorney fee in case of the institution of any foreclosure proceedings.

322. The Execution of Mortgages.— The statutes of the several States provide the manner in which mortgages shall be executed in each particular jurisdiction. It is usually required that the mortgage be signed in the presence of two witnesses, and that it be acknowledged before a Notary Public or other officer authorized by law to take acknowledgments. A mortgage will not be recorded unless it conforms to the requirements of law in these particulars. A mortgage which is not executed according to law will be good as between the parties to it, but is generally void as to third parties.

323. Delivery.— A mortgage is not operative until it is delivered from the mortgagor to the mortgagee. Personal delivery is not necessary; it is sufficient if the mortgagor by his agent delivers the instrument to the mortgagee.

324. Recording.— The statutes of the several States are quite uniform in requiring that real estate mortgages, to be effective against the holders of subsequent liens, shall be recorded with the Register of

Deeds, or other similar officer designated by law. It is a general rule that priority of record is priority of lien; that is, the mortgage recorded first is the first lien; the mortgage recorded next is the second lien, and so on. To this, however, there are many exceptions. For example: a second mortgage, taken with full knowledge of the existence of the prior unrecorded lien, will not take precedence of such unrecorded lien. Again, a mortgage made expressly subject to another mortgage, although first recorded, will remain subject to such other lien.

325. Foreclosure.— Foreclosure of a real estate mortgage is generally accomplished by judicial proceeding through which an order of sale is obtained from a court of competent jurisdiction, authorizing the mortgaged property to be sold. The statutes in some States provide for foreclosure by advertisement, and in such case it is unnecessary to procure an order of sale from a court, provided the mortgage itself contains a power of sale. It is usually safest, however, to foreclose by means of a judicial decree, as in such case all errors of description and complicated claims affecting the title to the mortgaged property can be legally adjusted.

326. Advertisement and Sale.— It is generally required that, before a foreclosure sale can be had, notice of the sale must be given by publication, either in newspapers or by posting notices, or by both posting and publishing in papers.

At the sale the mortgagee is permitted to bid upon the property, and he may become a purchaser provided he becomes such in good faith.

327. Redemption.— The statutes generally fix a period during which the mortgagor may, by paying to the mortgagee, or to some proper officer, the amount of the mortgage, interest, and costs, become entitled to a re-conveyance of his property. This right of the mortgagor is called his "equity of redemption." The period for redemption begins to run from the time of the commencement of the foreclosure. In many of the States it extends over a space of one year. The mortgagor is generally permitted to remain in possession until the expiration of his "equity of redemption," but during this period he must not commit waste by destroying the timber, fences, buildings, or other improvements upon the mortgaged land.

328. Crops.— If the mortgagor puts out crops which can not be harvested before the expiration of his equity of redemption, he is generally compelled to lose such crops, as his interest in the lands is absolutely terminated when his equity of redemption has expired.

> **Illustration.**— Collins, being owner of lands upon which Homer held a mortgage, sowed a crop of wheat after Homer had commenced foreclosure proceedings. Homer obtained a decree under which he caused the lands to be sold. Williams bid in the property at the sale. Collins afterward attempted to harvest the crop, but Williams recovered it back from him, and it was held that Collins' equity of redemption having expired, his title to the wheat was extinguished.

329. Subrogation.— The holder of a subsequent mortgage has a right to pay any prior mort-

gage at its maturity, and when he has so paid the same, he is substituted to all the rights possessed by the holder of such prior incumbrance. This substitution is called subrogation. The exercise of this right frequently becomes necessary on the part of the holder of a subsequent mortgage to prevent his interest being cut off by the foreclosure of a prior mortgage.

Illustration.— Angell held a second mortgage upon lands on which White held a first mortgage which was due. Now it was possible for White to foreclose his mortgage and thereby cut off Angell's lien. However, it was Angell's legal right for the purpose of self-protection, to tender White the amount of his mortgage, and thereupon Angell would be by operation of law subrogated to all of White's interest in the property.

330. (b) Liens Created by Operation of Law.— A lien created by operation of law arises either from the performance of service or from delivery of goods, material, or other property, or under the judgment or decree of a court.

331. Mechanics' Liens on Personal Property. — It is a general rule of law that when a mechanic has performed any services upon chattel property, he has a lien upon such property for the value of such services so long as he retains the property in his possession, and his possession can not be disturbed by the owner of the property until the claim for service is satisfied. If the mechanic voluntarily parts with possession of the property, his lien is thereby terminated.

Illustration.— Andrews, being a blacksmith, shod Bennett's horse. Bennett declined to pay for the services so rendered, and Andrews refused to deliver up the horse. The court held that Andrews had the right to retain possession of the horse under his mechanic's lien until the bill for the services rendered was paid.

332. Mechanics' Liens on Real Estate.—The law in most States provides that mechanics who erect buildings upon real estate may have a lien upon such real estate for the purpose of securing their compensation for services rendered and material furnished in the construction of such buildings.

333. Hotel Keepers' Liens.— A hotel keeper has a lien upon such of the baggage of his guest as is placed in his possession, and such lien is commensurate with the amount of the guest's bill, for board and lodging.

Illustration.— Williams stopped at the hotel of Kirke, and after the bill for his entertainment had accumulated to a considerable amount, attempted to remove some of his baggage from the hotel. Kirke declined to deliver up the property, and Williams attempted to recover the same by replevin. Williams's suit failed, the court holding that Kirke was entitled to retain possession of Williams's baggage until Williams's bill was paid.

334. Liens of Common Carriers.— Railway companies, express companies, and other common carriers have a lien upon all goods by them carried, to the amount of the cost of the transportation furnished. For this reason, a railway company or other

common carrier can not be compelled to deliver goods to their owner so long as lawful freight charges remain unpaid.

335. Liens of Attorneys.— An attorney-at-law has a lien upon all papers in a case wherein he is employed, and upon the judgment or decree therein rendered, to the extent of his reasonable charges for services.

336. Liens of Liverymen.— A liveryman has a lien upon all horses, harness, vehicles, and other property left in his keeping, and he is not obliged to deliver over such property until his reasonable charges have been paid. If such property is taken from him by stealth, he may replevin it, but if he voluntarily parts with possession, his lien is extinguished.

337. Chattel Mortgages in Conflict with Liens.— When, without the knowledge of the mortgagee, services are rendered upon chattel mortgage property, it is a general rule that the lien of the mechanic or other person *becomes secondary* to the lien of the mortgagee.

Illustration.— Kruger, being a liveryman, furnished board to White's horse for a period of six months. When the bill for keeping the horse amounted to as much as the horse was worth, Kruger discovered that Calvin held a mortgage upon the animal, and that such mortgage antedated the time when the horse was delivered for keep. The mortgage had been duly recorded. Afterward, and before the bill for the keep of the horse was paid, Calvin demanded possession of the horse by virtue of his

chattel mortgage. Kruger refused to part with the animal, claiming a right of possession under his liveryman's lien. The court held that Calvin's chattel mortgage was entitled to priority over Kruger's lien, and that Calvin was entitled to possession of the horse and to have his claim first satisfied in full. The amount of the mortgage and costs being greater than the sum realized upon the sale of the horse, Kruger lost the entire amount of his claim. If the horse had sold for more than the amount of Calvin's lien, Kruger would have been entitled to receive the surplus.

338. Liens by Levy.—There are, in general, two kinds of liens arising through levies made under judicial process: attachment levies, and execution levies.

339. Judicial Process.— By Judicial Process is meant a formal document issued by a court, authorizing a proper officer to execute certain provisions of the law, or to perform the judgments or decrees of the court.

340. Attachment Levies.— When a creditor, by reason of his debtor having fraudulently sold or disposed of his property, or having attempted so to do, becomes alarmed and has good reason to believe, and does believe, that a debt due upon express or implied contract is in jeopardy, such creditor may institute a proceeding called an attachment. In such cases judicial process called a writ of attachment is issued and placed in the hands of an officer who executes the same by seizing such unexempt property of the debtor as he can find, and holding the

same until the suit has been decided. If the creditor recovers a judgment, he causes an execution to be issued and levied upon the property held under the attachment, and such execution takes precedence of all liens and levies upon the attached property arising subsequent to the date of the attachment levy.

Illustration. — Thomas owed Mains a sum of money upon a contract. Mains discovered that Thomas was attempting to dispose of his goods for the purpose of defrauding him. He caused an attachment levy to be made. Subsequent to the date of the levy, Thomas gave Carlysle a chattel mortgage on the attached property. Mains prosecuted his attachment suit, and recovered a judgment, under which he caused an execution levy and sale to be made. Carlysle, claiming that his mortgage had priority over the execution levy, attempted to recover possession of the goods from Mains, who had bid them in at the execution sale. The court held that Mains's lien dated from the time of the levy of the attachment, and that date having been earlier than the date of Carlysle's mortgage, the attachment levy was given priority over the mortgage, and Carlysle's mortgage lien was held to have been cut off by Mains's sale of the goods for the satisfaction of his judgment. If the goods had brought more than the amount of Mains's judgment and costs, Carlysle would have been entitled to receive the surplus.

341. Execution Levies.— When a plaintiff in a suit at law has recovered judgment, the judgment is enforced by means of the issue and levy of an execution upon such available unexempt property of the defendant as can be found.

342. How Levies Are Made upon Personal Property.— A levy upon personal property is made by a sheriff, or other proper officer into whose hands the attachment or execution has been delivered, seizing and taking physical possession of the property sought to be held. It is usually provided that, after seizing property, the officer may place the same in the hands of a keeper, but the officer himself is responsible for the safe keeping of the property, and if the keeper defaults, the officer will be liable.

> **Illustration.**— A sheriff levied upon a horse, which he placed in the hands of a keeper, who negligently permitted the defendant to clandestinely seize the horse and take it beyond the jurisdiction of the court. The officer was held liable to the plaintiff for the damages arising through the negligence of his agent, the keeper.

343. How Levies Are Made upon Real Estate.— As real estate is not subject to physical seizure, a method for its constructive seizure is usually provided by law. This is usually accomplished by the officer making the levy, filing in the office of the Register of Deeds a notice in writing that a levy has been made upon certain lands, describing the same.

344. Exemptions.— Each State has its own peculiarities in extending immunity to debtors. The purpose of exemption laws is to provide that certain property can not be seized on judicial process, the theory being that no person should be divested of the property required by him for the

earning of a livelihood, or necessary to the care and support of his family. It is quite customary to provide that tools, libraries, clothing, household stores, and a homestead shall not be subject to sale under judicial process.

345. Execution Sales.— It is usually provided that property upon which a levy has been made, may be advertised and sold at public auction, and the proceeds of the sale applied to the extinguishment of the debt evidenced by the judgment upon which the execution has been issued. It is usually provided that the judgment debtor shall have a certain time after sale in which he may redeem real estate sold on execution, but there is usually no equity of redemption after such sale of personal property.

346. Discharge of Levy.— A judgment debtor may, at any time before the expiration of his right to redeem, discharge the levy by paying or tendering to the judgment creditor, or his attorney, or to the proper officer of the court, the full amount of the judgment, together with interest and costs.

BOOK THREE.

THE LAW OF THE BUSINESS RELATIONS.

"Ratification is equivalent to prior command." — *Legal Maxim.*

CHAPTER I.

AGENCY.

"The first duty of the agent is fidelity to his trust."
—*Legal Maxim.*

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347. The Nature of the Business Relations.— The business relations to be considered here, arise in two ways; *first*, by hiring, and *second*, by association for the purpose of securing the profit arising through the joining of the capital, labor, and skill of several persons in a common enterprise. Of the business relations arising by hiring we shall consider —

(a) Agency,
(b) Master and servant,
(c) Hotel keeper and guest,
(d) Common carriers.

Under the business relations arising by association for profit, we shall consider,

(a) Voluntary associations,

(b) Partnership,

(c) Joint stock companies,

(d) Limited partnership associations and limited joint stock companies,

(e) Corporations.

348. Agency.— An agent is one who acts for another in such other's name, place, and stead, having authority so to do.

The one for whom the agent acts is called the principal.

349. Kinds of Agents.— Agents, according to their authority, are either general or special. A General Agent is one who has authority to perform all acts relating to a certain kind of business. A Special Agent is one who has authority to perform a certain act only; when this act is performed, the agent's authority is terminated.

> **Illustration.**— Gibson put Nelson in his store as a business manager. Nelson's authority to buy, sell, and to make contracts relating to the business was therefore a continuing one, terminable only by the termination of his employment as business manager. Under these circumstances, Nelson was *the general agent* of Gibson.
>
> Palmer employed Kellogg to purchase a certain horse. When Kellogg had purchased the horse, his authority to act as the agent of Palmer terminated. In this case, Kellogg was a *special* agent.

350. The Authority of the Agent.— The authority of an agent is such only as he has received

from the principal either directly or by implication The *express* authority of an agent is conferred by means of verbal or written instructions. The *implied* authority of an agent is that which is necessary for the accomplishment of the purposes contemplated by his express instructions, and it includes the customs and usages habitually exercised by like agents employed for the same purpose by the same principal.

Illustration.— Harvey employed Miller by mail to prosecute a suit. The written letter of instructions comprised Miller's express authority, but this carried with it the implied right to employ such officers of the law as were necessary for the purpose of rendering prosecution of the suit effective, and this unexpressed authority was what is called implied authority. It is evident that implied authority is often as important as that which is express.

351. The Appointment of Agents.— A person may become the agent of another by direct appointment, which is the usual method, or by ratification of acts which one, not actually an agent, has performed in the name of an assumed principal who ratifies.

352. Ratification.— One who accepts the benefits of an act performed in his name by another is said to have ratified such act, and to have made it his own to the same extent as though he had originally authorized it.

Illustration.— Johnson bought goods in Wait's name without Wait's knowledge or authority. Afterward, Wait, with full knowledge of what

Johnson had done, accepted the goods and converted them to his own use. It was held that by such acceptance and conversion, Wait had ratified the unauthorized act of Johnson, and that by such ratification, Wait became liable for payment for the goods to the same extent as though he had originally authorized Johnson to purchase them.

353. The Reason for the Rule.—Ratification is the adoption of the acts of another, and in the case of the unauthorized acts of an agent it is held fully equivalent to a prior command. The reason for this is that it would be unjust to permit the principal to receive the benefits of the act of another without making him, at the same time, responsible for the burdens and liabilities arising from such acts.

354. Liabilities of the Agent.—So long as an agent acts within the scope of his authority and not in violation of law, he binds his principal by his acts. *One who deals with an agent must inform himself at his own peril of the extent of the agent's authority.*

Illustration.—Packard was Strong's agent for the sale of goods, but had no authority to collect. Little paid Packard for goods and received from him a receipt executed by Packard in Strong's name. Packard then embezzled the money received from Little. The court held that Strong might lawfully require Little to pay the amount over again. The court held that payment to an agent who has no authority to collect is not payment to the principal.

If Packard had delivered the money to Strong, Strong, by receiving it, would have ratified Packard's unauthorized act, and could not have required

the money a second time from Little. If Packard had been permitted by Strong to collect from Little from time to time, Little would have been entitled to assume Packard's authority to collect by reason of the fact of the repeated ratification of such acts by Packard's principal. Implied authority to collect, arising through a course of dealing, is hardly sufficient to justify a prudent business man in paying over money to an agent whose actual authority has not been ascertained. It is safe to say that everyone paying money to any agent should ascertain definitely the agent's present authority to collect.

355. The Agent's Signature.— An agent may execute the paper of his principal pertaining to the business of the agency in so negligent a manner that the agent, and not the principal, will be bound thereby. For example, if the agent sign his name to a note thus, "John Pendleton, Agent," the principal will not be bound. The word "Agent" following the agent's name is regarded as a mere matter of identification of the agent himself. It does not identify him with any principal. By such a signature *the agent and not the principal* is bound. The proper method by which a signature may be affixed by an agent is that wherein the name of the principal is signed first, and is followed by the signature of the agent, thus, "John Tripp, by William Churchill, his Agent."

356. Liabilities of the Principal.— The principal incurs a liability to the agent for the agent's compensation for service rendered, and he incurs a liability to other persons who have dealt with the

agent for the performance of the agent's contracts made within the scope of the agent's authority.

357. Termination of Agency.— Agency, as to its termination, is of two classes, (a) agency coupled with an interest, and (b) agency apart from an interest.

358. Agency Coupled with an Interest.— (a) When an agency is coupled with a pecuniary interest in an enterprise to which the agency relates, the agent can not be discharged until his interest in the enterprise has been extinguished.

> **Illustration.**— Anderson gave Beardslee a note against Curtis for collection, with the understanding that Beardslee was to retain for his fees a certain portion of the amount collected. Beardslee sued Curtis and recovered a judgment, and thereafter Anderson attempted to discharge Beardslee from further service in the case. It was held that Anderson could not do this without having first extinguished Beardslee's interest in the claim, by paying Beardslee what he was entitled to receive for the services he had rendered.

359. Agency Apart from an Interest.— (b) When the agent has no pecuniary interest in the business of his agency, his authority may be terminated by revocation, or by limitation contained in the agency contract, or by the death of his principal, or by renunciation of the authority by the agent himself. Death of the principal works an immediate dissolution of the agency.

360. Master and Servant. — The difference between agent and principal and master and

servant is that agency is a relation involving the exercise of some degree of *discretion*, while the sole duty of the servant is obedience to the commands of his master.

361. Duty of the Master.— It is the duty of the master who employs another as his servant to see that such servant is provided with reasonably safe appliances for the performance of such work as the master requires him to perform. The servant assumes the risks usually incident to the employment, but if the master, or the agent of the master superior in rank to the servant, sends the servant into a place of exceptional danger known to the master, or to such agent of the master, but not known to the servant, the master will be liable for any injuries which may result to the servant by reason of the special danger to which obedience to the order of his superior has subjected him.

Illustration.— Whiteside employed Bliss to work in a mine, and directed him to go into a tunnel, the roof of which had been negligently left without proper support. Bliss had no knowledge of the dangerous condition of the tunnel. The roof caved in and Bliss was seriously injured. Whiteside was held liable to Bliss for the amount of the damages which Bliss had sustained.

Delton employed Earle to work in his warehouse. In the course of his duty, Earle, without negligence on his part, was passing through a dark room to the elevator, and stepped through an improperly protected hatchway and sustained injuries. Delton was held liable for the amount of Earle's injuries, on the principle that it was the duty of Delton, as master,

to provide reasonably safe premises for his servant, and that Earle was entitled to compensation for the injuries arising by reason of Delton's omission of this duty.

362. Fellow Servants.— The master is not liable for injuries arising without fault on his part, as the result of the negligence of the fellow servant of the injured employee. By the term "fellow servant" is meant those employed in the same enterprise and having the same general authority.

Illustration.— A brakeman was injured by the falling of the step of an engine. The step had become loose through the negligence of the engineer. It was held that the railroad company was not liable to the brakeman for the damages he had sustained, as brakeman and engineer were regarded as fellow servants.

In a case in which an employee was sent into a place of danger by the foreman of a mill, the master was held liable for the resulting injuries, the laborer, and the foreman having control over him, not having the same general authority, were not regarded as fellow servants.

363. Exceptional Dangers.— When the master is employing a servant for a particular purpose, and afterward, by special direction, causes the servant to undertake some task more hazardous than that for which he was employed, the rule that the servant assumes the risks incident to his employment does not apply, and if the servant suffer any injury by reason of the increased hazard to which he has been exposed by his change of employment, the master

will be liable, provided the servant has not been guilty of contributory negligence.

Illustration.—Ayer employed a man for the purpose of drawing timber to a mill, but temporarily directed the man to run a saw in the mill. In this exceptionally hazardous occupation, the man, without fault on his part, was injured by the bursting of the saw. It was held that Ayer was liable, although the accident was one incident to the occupation of a sawyer.

364. Contributory Negligence.—In all cases where suits are begun for injuries resulting from negligence of the master, the servant, to be successful in his suit, must have been in the exercise of due diligence at the time the injury occurred. By due diligence is meant such care as an ordinarily prudent man would exercise under like circumstances. If the servant has been guilty of negligence which contributed to the accomplishment of the injury, he can not recover damages from his master for the injury sustained. The reason for the rule is that it is the policy of the law to permit no one to profit by his own carelessness. It is a general rule in all actions brought to recover damages for injuries sustained, whether between master and servant, or between persons sustaining no business relation to each other, that contributory negligence on the part of the injured party is a complete bar to the action. Thus, it is generally held that it is the duty of one about to cross a railway track to stop, and look, and listen, and if one who has not taken this precaution

passes upon the track, and is there injured by a passing train, it is held that his contributory negligence will prevent the recovery of a judgment against the railway company for the injury sustained, even though the company failed to give the usual warnings of the approach of a train.

Illustration.— Reynolds was in the service of a certain railway. He knew that a certain hand-hold on a box car had become loose and was unsafe. With full knowledge of the dangerous condition of the hand-hold, he trusted his weight to it, and by reason of its weakness, was precipitated to the ground and injured. It was held that he could not recover damages from the railway company, as his own negligence had contributed to the injury.

365. Comparative Contributory Negligence.— In several of the States, a rule is enforced under which it is left to the jury in every case to determine whether the master or the servant has been guilty of the greater negligence. If the negligence of the servant in such States is found to be less in degree than that of the master, the servant is permitted to recover such damages as he has sustained.

366. Damages.— By the term damages is meant the money measure of the injury, inconvenience, suffering, hardship, and loss sustained by a plaintiff by reason of the wrongful act, default, or negligence of another.

367. Damages Inflicted Willfully.— In cases where damages are inflicted willfully, or with wanton disregard for the rights of others, the contributory

negligence of the person injured will not be a bar to his right to recover damages.

Illustration.— Guy, an employee of a railway company, was walking on the company's track, when a train approached him from behind at such a rate of speed that the engineer, who saw Guy on the track, might easily have stopped the train in time to have avoided an accident, but instead of stopping, the engineer increased the speed of the train, without giving any warning signal, and overtaking Guy, struck and killed him. It was conceded that Guy was guilty of contributory negligence in the act of walking on the track, but it was held that the accident was due to the wanton act of the engineer, for which the railroad company was held liable. The engineer was also liable for the damages sustained by the deceased, whose representatives could have secured judgment against the engineer for such damages; but the engineer was without property, and, consequently, a suit was brought against the railway company, because the railway company possessed property upon which a levy could be made for the purpose of satisfying any judgment that might be recovered.

368. Compensation of Servants.— It is a fixed theory of the law that "the servant is worthy of his hire." If a master refuses to pay the servant according to the terms of his hire, the servant may at once discontinue his service. The whole legal duty of the master toward the servant may be briefly stated as being, first, to furnish the servant with suitable and reasonably safe tools, appliances, and premises with which and upon which to carry on the

master's work, and second, to pay the servant for all services rendered.

369. Remedies of Servants Wrongfully Discharged.— When a servant has been wrongfully discharged before the expiration of the period for which he was hired, he has his choice of three remedies: (a) he may immediately sue the master for such wages as remained earned and unpaid at the time of his discharge; (b) he may sue the master for the damages resulting from the breach of his contract of hire; (c) or, he may wait until the time for which he was originally hired has expired, and then may sue the master for compensation covering all of such time. In the latter case, he can recover only the difference between what he would have received had his contract not been wrongfully terminated, and what he has been able to earn after the termination of the contract. It is his duty to seek other employment, and he can not remain idle and without making an effort to secure employment and then recover wages for the whole of the time he has been idle. It is his duty to make a reasonably diligent search for employment at all reasonable times during the period of his wrongful discharge.

Illustration.— Hammond hired Remington upon a written contract for a period of three years, and at the end of the first year wrongfully dismissed Remington from his service. At the end of the third year, Remington sued Hammond for the whole compensation that would have accrued during the last two years, had the contract not been wrongfully ended. It was shown at the trial that Remington

was employed at $1,000 per year by Hammond, and that he would have consequently received from Hammond $2,000 during the two years after his wrongful discharge; it was also shown that during the same period of two years Remington had earned $1,500. It was held that he was entitled to recover from Hammond the difference between $2,000 (the sum he would have received) and $1,500 (the sum he actually received), or $500. If Remington, after diligent effort during the whole of the last two years, had failed to secure any employment, he would have been entitled to recover the whole $2,000 from Hammond.

370. Labor Debts.—In many States, preferences are given to labor debts. Laws frequently provide that property exempt from execution in all other cases, shall be liable to be seized and sold for the satisfaction of debts arising from personal labor.

The general laws under which corporations are organized frequently provide that stockholders shall be ultimately individually liable for all debts arising by virtue of personal services rendered on the part of those employed by the corporation. By the expression "ultimately liable" is meant that the assets of the corporation itself must be first exhausted before the individual property of the stockholders can be seized for the satisfaction of the debt.

371. Hotel Keepers and Guests.—A hotel keeper (or an inn keeper, as he is generally termed in law) is one who holds himself out as the keeper of a public house for the lodging and entertainment of guests for a reward.

One who keeps a boarding house or restaurant, wherein meals are served, but who does not furnish lodging, is not a hotel keeper.

372. The Duties of the Hotel Keeper.— It is the duty of the hotel keeper to receive into his hotel and to furnish with entertainment all persons who may apply. He has no right to select his guests. He may, however, refuse to receive one who is notoriously disreputable, or who is disorderly, intoxicated, or suffering from some dangerous, contagious disease. A hotel keeper would not only be warranted in turning away one afflicted with smallpox, but it would be his duty so to do. It is also his duty to turn away disorderly persons, intoxicated persons, and others who may render the lives and property of his guests insecure.

373. The Rights of the Hotel Keeper.— The keeper of a hotel may require his guest to pay for his entertainment in advance, and he many refuse to receive one who declines so to pay. The hotel keeper's lien for compensation for entertainment attaches to all of the goods, baggage, and other property of the guest brought into the hotel, and this is true whether the property belongs to the guest individually, or is in his hands as the agent or servant of another.

374. The Liabilities of the Hotel Keeper.— The common law liability of the hotel keeper is very strict. This liability has been abridged by statute in some of the States. In general, the hotel keeper is liable for the safe keeping of all of the property of

his guest brought by the guest into the hotel. This liability is not restricted to such property and money as are reasonably necessary for the purpose of travel, but covers all property of the guest without distinction or limit. The only excuse for the loss of the goods of a guest is, that they were destroyed by the act of God, inevitable accident, the public enemy, or by reason of the guest's own fault. A hotel keeper is held accountable for the conduct of all persons admitted to his hotel, and if he admits one who steals the property of a guest, he must make the loss good.

375. Rules.— A hotel keeper may make such rules for the government of guests and the protection of property of the guests within his house, as may be reasonable. A guest is warranted in ignoring unreasonable rules. It is generally held reasonable for a hotel keeper to require his guests to deposit in the safe of the hotel such of their valuables as are the ready subject of theft. When such a rule has been brought to the notice of a guest and has been violated, the landlord will not be held liable if the property is stolen.

376. Termination of the Liability.— The liability of the hotel keeper ceases when he ceases to derive profit from the entertainment of the guest.

377. Common Carriers.— A common carrier is one who undertakes for compensation to transport from place to place the goods or persons of such as choose to employ him.

378. Who Are Common Carriers? — Hackmen, trainmen, railroad companies, steamboat com

panies, express companies, and all who undertake to transport persons or property for reward, are common carriers. Common carriers are of two general classes, first, carriers of goods, and second, carriers of passengers.

379. Liabilities of Common Carriers of Goods.— Common carriers of goods are responsible for all loss or damage occurring to property delivered to them for transportation, excepting such damage as arises by the act of God, inevitable accident, the public enemy, or the shipper's own fault.

380. Loss or Damage Arising from Natural Causes.— A common carrier is not liable for losses from natural causes, such as frost, fermentation, evaporation, or natural decay of perishable articles, or the natural and necessary wear occasioned by transportation, provided the carrier exercises reasonable diligence to render such loss as slight as is practicable under the circumstances.

381. Discrimination between Shippers.— A common carrier is bound to receive for transportation all such goods as it holds itself out as carrying, and it can not make distinctions between shippers. If it refuses to carry goods without just excuse, it will be liable for resulting damages.

382. Freight Charges.— A common carrier may refuse to accept goods for transportation unless the freight charges are paid in advance, and when goods are shipped with charges following, the carrier has a lien on the goods for the amount of such charges, and he is justified in refusing to deliver the

goods to the consignee until such charges have been paid.

383. The Contract of Shipment.— Common carriers may qualify their liability by reasonable special contracts, but they can not by contract excuse themselves from such liability as arises from gross negligence. Gross negligence is the absence of even slight care.

384. Termination of the Liability of the Common Carrier.— The reponsibility of the carrier ends when the goods have been safely delivered at the point of destination, and after a sufficient time has elapsed for the owner to receive them. After that, the carrier is bound to exercise ordinary care only. By ordinary care is meant such care as a reasonably prudent man could exercise in the discharge of his individual undertakings.

385. Connecting Carriers.— Connecting carriers are not responsible beyond their own proportion of the route, unless there is such an arrangement among the different carriers that each one has authority to issue bills of lading for the entire route.

386. Common Carriers of Passengers.— Common carriers of passengers are held to the highest degree of human foresight for the prevention of injury to their passengers, and for failure to exercise this, they will be held liable to all, who, without contributory negligence, sustain damages.

387. Baggage of Passengers.— A common carrier is liable for the loss of baggage to the same

extent that it would be liable for the loss of any other freight.

388. Stations.— A railway company that holds itself out as carrier for the transportation of passengers is bound to furnish suitable stations where passengers may alight from the trains with reasonable safety.

The carrier is bound to stop all passenger trains at the stations where they are scheduled to stop, and if the carrier cause a passenger to alight at some place other than the station, and the passenger suffers damage or injury thereby without fault on his part, the carrier will be liable to such passenger to the extent of the injury sustained.

389. Checks.— A check for baggage issued by a carrier is *prima facie* evidence that the baggage has been deposited with the carrier issuing the check. A check is more than a mere convenience for the identification of baggage. It stands in the position of a formal bill of lading. If a passenger loses his check, he is entitled to recover his baggage upon identifying the same to the satisfaction of the carrier.

390. Agreements in Tickets.— An agreement in a ticket setting forth that the passenger waives all right to claim damages resulting from any accident which may occur to him in transit upon a particular train, is valid so far as damages resulting from ordinary or slight negligence on the part of the company are concerned, but it will not protect the company against an action for such injuries as may result from gross negligence on the part of the company.

By gross negligence is meant the utter disregard of the usual rules of caution observed by ordinarily prudent people.

391. Passengers Traveling on Passes.— A passenger who travels on a gratuitous pass wherein it is stipulated that the company shall be exonerated from all liability for damage, can not recover from the company for damages sustained. The general opinion seems to be, however, that even under such circumstances, the passenger could recover for all damages arising from the wanton act or gross negligence of the carrier or its servants.

CHAPTER II.

BUSINESS RELATIONS BY ASSOCIATION FOR PROFIT.

"He who seeks equity, must do equity." — *Legal Maxim.*

392. Associations for Profit.
393. Voluntary Associations.
394. Ratification.
395. Partnership.
396. The Liabilities of Partners.
397. Kinds of Partnership.
398. Kinds of Partners.
399. Liabilities of Nominal and Dormant Partners.
400. Division of Profits.
401. Effect of Incapacitating Sickness.
402. The Test of Partnership.
403. Joint Investments.
404. Suits between Partners.
405. Dissolution.
406. Joint Stock Companies.
407. Limited Partnership Associations and Limited Joint Stock Companies.
408. The Limited Liability of Stockholders.

392. Associations for Profit.— There are several ways by which persons may unite their capital, effort, and skill for the accomplishment of a common purpose. When business enterprises involving more capital and requiring more knowledge or experience than is possessed by a single person are to be undertaken, it is customary for several to unite under some one of the approved forms of association, each con-

tributing something in the way of capital, labor, and experience to the project.

393. (a) Voluntary Associations.— Voluntary Associations are mentioned for the purpose of noting their peculiarities. A voluntary association is one in which several persons unite for some object other than pecuniary profit. Unincorporated literary clubs and unincorporated fraternal societies are of this class. A voluntary association is usually known by a special name, but it is not liable for debts contracted in the name of the association. The association can not be sued in its own name, nor can it procure property, nor dispose of the same, nor make contracts by such name. If property is to be conveyed for the use of a voluntary association, it should be conveyed to one or more individuals as trustees for such association, by them to be held in trust for the purposes to which it is desired that such property shall be devoted.

394. Ratification.— If the members of a voluntary association ratify a contract made in the name of the association and accept the benefits thereof, so many as join in such ratification will be personally liable upon such contract. If a committee assumes to make a contract on the part of a voluntary association, they are usually held to be personally liable upon such contract.

395. (b) Partnership.— When two or more persons unite their property, labor, and skill in a common enterprise for the purpose of profit, they have formed a partnership. This is one of the oldest and crudest forms of business association.

396. The Liabilities of Partners.— Each partner is the general agent of the firm, and has power to pledge the credit of the firm, and may make binding contracts in the firm name. As among themselves, the partners may restrict the individual authority of the members of the firm, but as to third parties who have no knowledge of such restrictions, each partner is the general agent of the firm.

397. Kinds of Partnership.—Partnership may arise in two ways, (a) by agreement, and (b) by "holding out." When the parties agree to form a partnership under a firm name and with defined rights and duties on the part of the members, a partnership by agreement is effected. A partnership by "holding out" arises when a person represents to a third party that a certain second party is his partner, but such partnership is binding only to this extent, that the third party will be protected in dealing with the second party as a partner, and the first party who has made the representations will be bound to such third party by the acts of the second party as fully as though a partnership by contract existed.

Illustration.— Wilkinson represented to Holt that Simons was his (Wilkinson's) partner. Holt dealt with Simons in reliance upon Wilkinson's representation. It was held that Holt had a legal right to hold Wilkinson bound by the contract made with Simons to the same extent as though Wilkinson had been Simons's actual partner, although it was shown that in fact no partnership relation existed at the time Wilkinson made the representation.

Davis, in the presence of Anthony, represented to Cole that he was Anthony's partner. Anthony did

not correct the statement. Cole dealt with Davis in reliance upon the representation. It was held that Cole was entitled to rely upon the statement of Davis, owing to Anthony's neglect to contradict it, and that so far as Cole was concerned, Davis was to be regarded as Anthony's partner, and that contracts based upon the unchallenged statement of Davis and executed between Davis and Cole were binding upon Anthony as well as upon Davis. It is a general principle that "one who is silent when he should speak, will not be heard to speak when he should remain silent."

398. Kinds of Partners.— Partners are said to be either active, dormant, nominal, or special. An Active Partner is one who fully and openly participates in the affairs of the firm. A Dormant Partner is one who takes no active part in the management of the firm business and who is not known to the general public as a member of the firm. A dormant partner is sometimes called a secret partner. A Nominal Partner is one who permits the use of his name as a member of the firm for the purpose of strengthening the firm's credit, and without having any pecuniary interest in the firm's business. A Special Partner is one whose liability is limited to a certain amount. The relation of special partner is usually effected by compliance with provisions of State law requiring public notice to be given of the extent of the special partner's liability.

399. Liabilities of Nominal and Dormant Partners.— One who lends his credit to a firm (whether he has an interest in the business of the

firm or not) by permitting the use of his name, assumes liabilities equal in every respect to those assumed by active partners. He is personally liable for all of the firm debts. A secret or dormant partner, when discovered, may be in like manner held for all the debts of the firm.

400. Division of Profits.— The profits of a partnership, in the absence of any agreement to the contrary, will be divided equally among the partners, share and share alike. It is usual for the partners to agree upon some basis of distribution of profits, and such agreement will control.

401. Effect of Incapacitating Sickness.— When a partner becomes disabled by reason of physical incapacity, the law will leave the adjustment of the detriment suffered by the other partners, to the terms of the contract of partnership, or to such agreement as the partners may make among themselves. In case the articles of co-partnership are silent on the subject, and no agreement can be reached among the partners, the profits of the business are to be distributed in the same manner as though the incapacitated partner were performing his full share of the partnership duties. It is therefore very important that this element of danger should be provided for by the partnership agreement, and a just and equitable prearrangement governing such contingencies made.

402. The Test of Partnership.— There is no absolute test of partnership. The relation usually involves participation in the capital, control, and profit of the partnership enterprise. The partnership may,

however, exist in the absence of any one of those elements. An agreement to share profits, but not to share losses, may be a partnership agreement.

403. Joint Investment.—When there is a joint investment in an enterprise, a partnership usually results, although one party may invest money, another labor, and another special skill. Where there is no joint ownership, one who receives profit, having no proprietorship in the profit, but receiving such profit merely as a measure of his compensation, is not a partner, unless other essentials of the relation exist. Thus, a clerk in a store, whose compensation is measured by the profits of the concern, is not by that fact constituted a partner.

404. Suits between Partners.—It is a general rule that co-partners can not sue each other upon matters arising out of partnership business. Courts of equity have, in general, jurisdiction over all partnership disputes. If one person be a member of each of two partnerships, the firms of which he is a member can not sue each other. The reason for the rule is that one person can not be both plaintiff and defendant in the same suit. A partner may sue another partner for matters arising outside the firm business, not involving matters of the firm.

405. Dissolution.—A partnership may be dissolved by the expiration of the term for which it was created, or by the termination of the business for the transaction of which it was formed, or by the decree of a court, or by the bankruptcy of the firm, or by

the death of a partner, or by the assignment of the interest of one of the partners. When the partner sells out his interest, the partnership is *ipso facto* dissolved. When a partner dies, the partnership is terminated, and it becomes the duty of the surviving partner to close up the business of the firm. The right of the surviving partner to the management of the firm business for the purpose of terminating it is superior to the right of the executor or administrator, and these officers are excluded from any participation in the winding up of any business of the firm of which the deceased was a member.

406. (c) **Joint Stock Companies.**— An unincorporated joint stock company, as to the general liability of its members, is regarded as an ordinary partnership, and each member is individually liable for all the debts of the company. It is a form of organization that is rapidly disappearing.

407. (d) **Limited Partnership Associations and Limited Joint Stock Companies.**— The terms "partnership association," and "joint stock company" are practically synonymous. In the absence of a statute, the liabilities of the stockholders of such organizations are practically the same as in ordinary partnerships. In most of the States, however, there have been statutes enacted providing a method by which such associations may be organized having a limited liability on the part of the stockholders for the debts of the company. For the purpose of giving public notice of the limited individual obligation of the members of such com-

panies, the statutes usually require that the word "limited" shall appear at the end of the corporate name as a part of the same. Thus, we have such names as "The American Pure Food Company, Limited," and "The Gregory Publishing Company, Limited." Whenever the word "limited" appears in a corporate name, its use is notice to all the world that the stockholders of such company claim a limited and not a general individual liability for the debts of the concern.

408. The Limited Liability of Stockholders.— In limited partnership associations and joint stock companies, the statutes usually provide that the shareholder shall be individually liable to the creditors of the company for labor debts, and for any part of the stock subscription of such shareholder remaining unpaid. Aside from these items, the debts of the concern can not usually be collected from the individual estate of a stockholder.

CHAPTER III.

CORPORATIONS.

"The charter is the measure of corporate authority."—*Legal Maxim.*

409. Corporations Defined.
410. Corporations and Partnerships Compared.
411. Charters.
412. Articles.
413. Form of Articles of Association.
414. The Rights and Powers of Corporations.
415. Corporate Name.
416. Officers.
417. By-Laws.
418. Form of By-Laws.
419. Resolutions.
420. Capital Stock.
421. Common Stock.
422. Preferred Stock.
423. Guaranteed Stock.
424. Transfer of Stock.
425. Books and Records.
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427. Amendment of By-Laws and Charter.
428. Changes of Corporate Policy.
429. Stockholders' Meetings.
430. Form of Notice.
431. Elections.
432. Liabilities of Stockholders.
433. Promoters.
434. Payment for Corporate Stock.
435. Dissolution.
436. Trusts.

409. Corporations Defined.— A corporation is an organization of persons doing business under a distinct name, and enjoying certain rights and immunities conferred by charter.

410. Corporations and Partnerships Compared.— The preponderance of business sagacity has long since determined that a corporate charter is more desirable as a means of organization than is the older and more clumsy institution known as a partnership or co-partnership. A partnership is necessarily limited in its number of members, and, consequently, in the amount of capital obtainable, and the fact that each member is individually liable for all of the debts of the co-partnership, renders it a menace to the private estate of each of its members. In addition to this, each partner is the agent of every member of the firm for the transaction of the firm business, and a dishonest member may not only wreck the business of the firm, but may, as well, involve in ruin the private estates of all his co-partners. When a partner sells his interest, or dies, the partnership is by that fact dissolved. An interest in a partnership can not be used readily by any of the members as a means for obtaining extensions of credit in the procurement of funds for use outside the partnership purposes.

The corporation has been designed for the purpose of remedying all these defects of the co-partnership. The shareholders of the corporation enjoy practical immunity from the debts of the concern. The corporation business is conducted by officers

chosen for that purpose. The members of the corporation are not individually liable for the acts and omissions of their fellow stockholders. If the corporate enterprise fails, those who have contributed to the capital stock generally lose only the amount they have subscribed, and their individual estates are not swallowed up or involved in the corporate disaster. If a stockholder dies, his heirs inherit his stock, and the business of the corporation is not interrupted. If a stockholder desires to withdraw from the corporation, he can effect his purpose by selling his stock, and the purchaser of the stock is substituted to all of the rights of his vendor. If a stockholder wishes to borrow money for use in other enterprises, his stock can be used as a collateral security without in any way impairing the credit of the corporation. In addition to all this, the number of persons and the amount of capital that can be interested in a corporate enterprise are practically unlimited, and, as a consequence, nearly all of the large undertakings of the present day are conducted by organizations of this character.

411. Charters.— The charter of a corporation is the authority by which it exists and carries on its corporate business. Formerly, charters were granted by means of special legislative acts, each corporation coming into existence under a separate enactment. At present, nearly all corporations are organized under general State laws and not by special acts. These general laws provide that when a certain number of persons shall have adopted a corporate name,

and shall have joined in executing, before a proper officer, articles of association, setting forth the name, capital, duration, objects, and the names of the stockholders and officers of the proposed corporation, and shall have caused such articles of association to be filed or recorded with the proper officer, or officers named in the statute, such persons shall become a body corporate. In such case, the general law and the articles of association in compliance therewith become and are collectively the charter of the corporation.

412. Articles of Association.— The articles of association of a corporation comprise the formal statement of the essential features of the organization. Together with the act under which the corporation is organized, they are the true measure of the purpose and authority of the company. The law usually requires them to be filed or recorded with the secretary of state, and the county clerk of the county and State in which the corporation purposes to carry on its business. The corporation comes into legal existence only when it has fully complied with the law by filing and recording its articles of association, according to the direction of the statute under which it is formed. Until the law has been complied with, the corporation has no legal existence. The original incorporators are usually required by law to sign the articles of association and to acknowledge execution of the same before a notary public, or other officer having authority to take acknowledgments.

413. Form of Articles of Association.— For the purpose of giving a more complete idea of the matters contained in articles of association of corporations, we herewith insert a copy of the articles of association of an actual company.

ARTICLES OF ASSOCIATION.

The subscribers hereto, for the purpose of becoming incorporated under the provisions of Act. 35 of the Public Acts of Michigan, of the year 1867, entitled, "An act to Provide for the Formation of Street Railways," and all acts amendatory thereof, and supplementary thereto, do hereby make, execute, and adopt the following articles of association, to wit: —

NAME.

I. The name by which this corporation shall be known in law is "Consolidated Street Railway Company."

PURPOSE.

II. The purpose for which this corporation is formed is to acquire, own, maintain, operate, and use the street railways, property, and franchises now owned, maintained, operated, and used by the Union Street Railway Company and the Independent Street Railway Company, and other companies, and to construct, own, maintain, operate, and use other street railways in and about the city of Blank, and the adjacent counties, townships, and villages.

CAPITAL STOCK.

III. The amount of the capital stock of this corporation is $4,000,000, divided into 40,000 shares, 20,000 shares of which shall be preferred stock, and 20,000 shares of which shall be common stock.

STOCKHOLDERS.

IV. The names of the stockholders of this corporation and their respective residences, and the number of shares held by each are as follows, to wit: —

William Walker, Boston, Mass	100	shares
Warren White, Atlanta, Ga	200	"
Wilson Wheeler, Cleveland, O	500	"
William W. Cook, New York City	80	"
Robert Burns, Blank, Mich	100	"

PLACE OF BUSINESS.

V. The City in which the offices for the transaction of the business of this corporation shall be located, and where its business is to be carried on is the city of Blank, county of Wayne, State of Michigan.

DURATION.

VI. The term of the existence of this corporation shall be thirty years from the date hereof.

DIRECTORS.

VII. The number of directors in this corporation is five, and the names of those who shall be directors for the first year are —

William Walker,
Warren White,
Wilson Wheeler,
William W. Cook,
Robert Burns.

In witness whereof we have hereunto set our hands and seals this second day of January, A. D. 1900.

William Walker (LS)
Warren White (LS)
Wilson Wheeler (LS)
William W. Cook (LS)
Robert Burns (LS)

State of Michigan } ss
County of Wayne }

On this second day of January, A. D. 1900, before me, a Notary Public, in and for said county, personally appeared, William Walker, Warren White, Wilson Wheeler, William W. Cook, Robert Burns, to me known to be the same persons who executed the foregoing instrument, who severally acknowledge that they executed the same for the intents and purposes therein named, and that such execution was their several free act and deed.

HOWARD WARREN,
Notary Public.

414. The Rights and Powers of Corporations.— The rights and powers of a corporation are called its franchises. In general, corporations have authority to possess —

(a) A corporate name,
(b) Corporate officers,
(c) By-laws,
(d) Capital stock, and,
(e) A common seal.

It is a general rule that a corporation possesses all authority expressly conferred by its charter, together with such implied authority as is necessary to render its express authority effectual.

415. (a) **Corporate Name.**— In general, corporations are known by a distinct name by which they may sue and be sued, contract and be contracted with. When a corporation has adopted a name, such name becomes its individual property, and no other company has a legal right to use the same name, or a name so similar as to be misleading. Courts will prohibit, by injunction, the use by one company of the name of another company, or a name so similar to that of another company that the public will be misled thereby.

416. (b) **Officers.**— The business of a corporation is carried on by its officers. The executive board is usually composed of several members chosen from and by the stockholders, and is called a board of directors. Ordinarily, the board of directors chooses from its own number the president, vice-president, secretary, and treasurer of the company. The board of directors acting as a whole, and by its officers, and by its several committees, superintends and executes the business of the corporation. The directors are usually elected annually, and in case their conduct of the business is not satisfactory to the stockholders, the remedy of the stockholders, in the absence of fraud, is accomplished by electing a board composed of different members at the next annual meeting.

417. (c) **By-Laws.**— Subject to the provisions of its charter, the corporation has authority to make all reasonable by-laws for its own self-government. These by-laws are binding upon all of the stockhold-

ers, and all stock is issued subject by implication, to their provisions.

If a by-law is unreasonable in its operation, it is void. If a by-law is in contravention of the Constitution of the United States, or the constitution or statutes of the State in which the corporation is organized, such by-law is void.

The proper authority for the enactment of by-laws is lodged with the stockholders, and by-laws can be enacted and amended (in the absence of express statutory provisions to the contrary) at stockholders' meetings only.

418. Form of By-Laws.— For the purpose of showing the general scope and form of corporate by-laws, a condensed set is herein given. These by-laws should be amplified and adapted to the use of any particular company before adoption by such company. Before purchasing stock in any corporation, the purchaser should examine the by-laws of such company for the purpose of ascertaining the rules of corporate government to which he is submitting himself and his investment.

BY-LAWS OF THE AMERICAN MANUFACTURING COMPANY.

ARTICLE I, SECTION I.

Name: The name of this corporation is, and shall be, "The American Manufacturing Company."

ARTICLE II, SECTION I.

Capital Stock: The capital stock of this corporation is, and shall be, one million dollars ($1,000,000), which is divided into five thousand (5,000) shares of common stock of the par

value of one hundred dollars ($100) per share, five thousand (5,000) shares of non-cumulative preferred stock, bearing guaranteed dividends of six per centum (6%) per annum, payable annually, and being of the par value of one hundred dollars ($100) per share. Said shares shall be issued only when fully paid, and shall be non-assessable, and shall be transferred upon the books of the company in the same manner as is lawful and customary in the issue and transfer of shares of like corporations, by the surrender of the old certificate, and the issue of a new certificate, or certificates, signed by the president and secretary of this company, and under the corporate seal thereof, in legal form. Each share of capital stock issued shall entitle the legal holder thereof to one vote on all matters coming before any stockholders' meeting of this company.

ARTICLE III, SECTION 1.

Officers: The officers of this company shall consist of a Board of five Directors, who shall elect from their own number at the annual meeting, in each year, one President, one Vice-President, one Secretary, and one Treasurer.

ARTICLE IV, SECTION 1.

Duties of Officers and Directors: The Board of Directors of this company shall have full and exclusive charge, control, and supervision of all of the business of this corporation. They shall have full power to make and to annul contracts; they shall have full power to purchase property, both real and personal for use for corporate purposes; they shall have full power to pledge the credit of this company up to an amount which shall render the total liabilities of this corporation at any one time a sum not exceeding ten thousand dollars ($10,000); they shall have no power, however, to fix their own salaries or to pledge the credit of this corporation for an amount exceeding that last above mentioned.

SECTION 2.

Duties of President: It shall be the duty of the president of this company to preside at all meetings thereof; to call all meetings of the stockholders, and of the Board of Directors; to execute all contracts, negotiable paper, and stock certificates of this company, under his official signature; to exercise general supervision of all of the business affairs of this company, and to perform all other duties usually incident and reasonably necessary to the functions of his office.

SECTION 3.

Duties of Vice-President: During the absence or disability of the president of this company, the vice-president thereof shall have full authority to perform all of the duties hereinbefore mentioned as the duties of the president.

SECTION 4.

Duties of Secretary: The secretary of this company shall keep a full and complete record of all stockholders' meetings, directors' meetings, and of all business transactions thereof. He shall have general charge of the offices of this company, and it shall be his duty to correctly keep all books and records of all business transactions of this corporation, and he shall perform all other duties imposed upon him from time to time, by the stockholders, or by the board of directors of this company.

SECTION 5.

Duties of Treasurer: The treasurer of this company shall receive and safely keep all the funds thereof; he shall make and preserve a correct record of all the funds received, and of all disbursements thereof, and shall retain in his possession and transmit to his successors in office, vouchers for all disbursements made. When requested so to do by the Board of Directors of this company, he shall execute to said

company, bonds in such amount and with such surety or sureties, as shall be approved by said board.

ARTICLE V, SECTION 1.

Meetings: The annual meetings of this corporation shall be held at the city of Elkhart, County of Elkhart, State of Indiana, on the first Monday in February in each year hereafter, at the hour of 1:00 o'clock, P. M., at the office of said company in said city.

SECTION 2.

Special Stockholders' Meetings: Special stockholders' meetings of this company may be convened on the call of the president thereof, at any time, by giving ten (10) days previous notice in writing, setting forth the purpose of such meeting, and served either personally, or by mailing the same, with postage fully prepaid, to the last address of each stockholder appearing upon the books of the company.

ARTICLE VI, SECTION 1.

Dividends: The Board of Directors of this company shall annually declare the net profits thereof, and distribute the same by way of dividends to such extent as they shall deem expedient. Such dividends may be paid either in cash, or in stock, in the discretion of the Board of Directors.

ARTICLE VII, SECTION 1.

Amendments: These by-laws may be amended at any stockholders' meeting by a three-fourths majority vote of all stock represented.

419. Resolutions.—The by-laws of a company are designed for the purpose of regulating its general business; the *special* legislative acts of a corporation are effected by the passing of resolutions. For example, if a corporation desires to meet a special

emergency, such as the necessity for an issue of bonds, secured by a mortgage upon the corporate property, the authority to issue such bonds is given to the officers of the company by the adoption of resolutions. These resolutions are usually preceded by a preamble reciting the reasons which have impelled the action. An investor who is about to purchase bonds or securities issued by a corporation should inspect the records of the company for the purpose of ascertaining the sufficiency of the authority under which such bonds are issued. If the authority is insufficient, the bonds will be found worthless. This is a matter that the investor must investigate at his own peril.

420. (d) **Capital Stock.**— The capital stock of a corporation consists of the money or property forming the capital upon which the corporation is to carry on its business. The capital stock of a corporation is usually divided into equal shares which are evidenced by stock certificates issued under the seal of the corporation, and signed by the president and secretary thereof. Ownership of stock may exist in the absence of the issue of any stock certificate, the certificates being merely the convenient documentary evidence of such ownership. There are three general classes of stock (I) Common stock, (II) Preferred stock, (III) Guaranteed stock.

421. (I) **Common Stock.**— When there is no agreement between the corporation and its shareholders that any preference shall be given to one share over another, or that any specified dividend

shall be paid to any of its shareholders, its stock is termed *common stock*, and each share is equal in value to every other share.

422. (II) Preferred Stock.— When a corporation issues certain of its shares subject to any agreement between the corporation and the purchasers of such shares, beneficial to such purchasers, such stock is called *preferred stock*, for the reason that the holders of such stock are given a preference over the holders of common stock.

The preference usually consists in an agreement on the part of the corporation to pay to the holders of its preferred shares a certain annual dividend. When preferred stock is issued, it is generally specified whether it shall be "cumulative" or "non-cumulative." All arrears of dividends must be paid on cumulative preferred stock before any dividend can be paid on common stock. Thus, if a dividend of 6% were passed for four years, 24% must be paid out of the profits before the common stock could participate. On non-cumulative stock, a dividend once passed is passed forever. Unless otherwise specified, all preferred stock is cumulative.

In case no profit is made by the corporation, the holders of preferred shares can not recover the amount of their preference by suing the corporation. The reason for this is that, if the sum contemplated by the preference given were paid by a corporation which has made no profit, the payment would necessarily lessen and impair the capital stock of the corporation. It is against the policy of the law to

permit a corporation to impair its capital by payment of dividends. Consequently, the holder of preferred shares in a company which has earned no profit, must wait until a profit has been earned and declared before he can receive the advantage of his preference. When the corporation has earned profits, the holder of preferred shares is entitled to have his preferred claims satisfied before the holders of common stock can be permitted to receive dividends.

423. Guaranteed Stock.— Corporations sometimes issue a class of preferred shares on which they guarantee that a certain annual interest or dividend will be realized by the shareholder. In case the profits of the corporation are insufficient to pay the profit guaranteed, the shareholder has no legal recourse against the corporation for the recovery of the unpaid sum. The reason is the same as that given in the case of preferred shares. It is against the policy of the law to permit a stockholder to compel a corporation to impair its capital for the purpose of paying a dividend whether such dividend has or has not been guaranteed.

424. Transfer of Stock.— The shares of stock in a corporation pass by assignment or by inheritance. They are regarded as commercial paper, and *bona fide* purchasers of corporate certificates are protected as far as is consistent with the rights of the corporation. A transfer of stock is usually effected by a written assignment and delivery of the certificate evidencing the shares transferred. To be binding

upon the company, such transfer should be brought to the notice of the company and recorded upon its books. In case of the transfer of a portion only of the shares represented by a stock certificate, it is customary for the assignor to surrender such certificate to the corporation and to receive therefrom in return certificates issued to the proper persons for the desired number of shares.

425. Books and Records.— The books and records of a corporation are the only memory of its transactions. They are the best evidence of the acts that the corporation has performed. Under the common law, as well as by statutes in many of the States, the books and records of a corporation are at all reasonable times, and for all reasonable purposes, open to the inspection of its stockholders.

426. (e) Dividends.— The net profits of a corporation declared by the Board of Directors, and ordered paid to the stockholders, are called dividends. A dividend becomes the property of the person who is the owner of the stock at the time the dividend is declared. Dividends may be paid in cash or in stock. It is customary, when the corporation has diverted profits to the extension of its corporate business, to issue to the stockholders stock to an amount equal to the sum they would have received had the profits which have been used to enlarge the business been divided in cash. Such an issue is called a "stock dividend."

Illustration.— The Alaska Wagon Works in a certain year earned a net profit of $10,000 which they

used in enlarging their plant. It was held proper for them to declare a stock dividend of $10,000 which they issued to their shareholders at par and in the same proportion in which a cash dividend would have been distributed.

427. Amendment of By-laws and Charter.— The by-laws of a corporation usually provide the method by which they may be amended. In like manner the general law usually provides a method by which the corporate name may be changed or the capital stock may be increased or diminished. Amendments of either the by-laws or the charter must be accomplished by the stockholders, and can not be effected by the Board of Directors, unless permitted by the charter.

428. Changes of Corporate Policy.— Radical changes of corporate policy, such as the issue of preferred or guaranteed shares, can not be effected except by the unanimous consent of the stockholders. A single stockholder can, by his objection, prevent the issuance of preferred or guaranteed stock, unless such stock was contemplated and provided for in the original charter or by-laws of the corporation. The reason for the rule is that it is deemed unjust, after stockholders have invested their money on a fixed and established basis, to permit any majority to change the basis of investment against the will of the minority. The basis on which a stockholder is invited into a company becomes, in effect, a contract between the company and such stockholder, and any change of such basis is, in effect, the viola-

tion of such contract. It can be brought about legally only by a substituted agreement in which such stockholder concurs. By the mutual consent of all of the stockholders of a corporation, in the absence of statutory provision to the contrary, preferred shares may be issued at any time.

429. Stockholders' Meetings.—Stockholders' meetings are either general (regular) or special. The general meetings of stockholders occur at times fixed and specified by the by-laws or the charter. No notice of these meetings is generally necessary. The by-laws themselves are regarded as sufficient notice of the meetings, the time and place of which they specify. Special stockholders' meetings are those called for special purposes, and to meet special emergencies. When matters arise, requiring immediate action and incapable of being delayed until the next regular stockholders' meeting, it is customary to call a special stockholders' meeting. The by-laws usually provide the kind and manner of notice to be given for the purpose of calling the stockholders together. In all cases, the notice given must be reasonable, and it should state specifically the purpose of the meeting. Matters not contemplated in the notice of a special stockholders' meeting can not be properly acted upon at such meeting, except by the unanimous consent of all the stockholders of the corporation.

430. Form of Notice.— For the convenience of those interested, we give herewith a form of notice which may be readily adapted to the requirements of any particular case in which a like notice is necessary.

NOTICE OF SPECIAL STOCKHOLDERS' MEETING.

To Amos Markham,
Wayne, Mich.

Sir: You are hereby notified that a special stockholders' meeting of the Michigan Manufacturing Company (a Michigan corporation) will be held at the office of said company, on the 21st day of May, A. D. 1900, at the hour of one o'clock P. M., for the purpose of devising and adopting ways and means for the issue and sale of corporate bonds, secured by a first mortgage lien upon all of the property of this company, or otherwise, for the purpose of raising the sum of $100,000 for use in the extension of the business of said company. Dated, Wayne, Mich., May 10, 1900.

WILLIAM WARREN, *Secretary.*

431. Elections.— Corporate elections are usually held at the annual meeting. Such elections are to be conducted in accordance with the provisions of the charter and the by-laws. As in all deliberations of the corporation, when the charter and by-laws are silent, rules of parliamentary law will control.

432. Liabilities of Stockholders.— The individual liability of stockholders is usually limited to a direct liability of individual subscribers for any unpaid sums subscribed to the capital stock, and to an ultimate individual liability for labor debts. As to the former obligation, it is held generally in this country that unpaid stock subscriptions form a trust fund for the benefit of the creditors of the corporation. In other words, it is held that the creditors of a corporation are entitled to have the benefit of all funds which have been paid, or which have been promised to be paid into the treasury of the company.

Illustration.— Ames subscribed $10,000 to the capital stock of the National Mining Company. Through a secret agreement between himself and the company the whole amount of his stock was issued and credited to him as fully paid up, upon payment by him of $5,000 into the treasury of the company. The company afterward became insolvent, and the creditors discovered that Ames had paid but $5,000 for $10,000 worth of stock. An action was successfully maintained by the creditors for the purpose of compelling Ames to pay the remaining $5,000 subscribed.

433. Promoters.— A promoter is one who exerts himself to organize and capitalize a corporation. He is under a constant obligation to exert whatever advantage he may possess fairly and for the interest of the corporation. He is not to be permitted to speculate at the expense of the corporation he is promoting. For example, if he purchases property, and re-sells it to the corporation at an advanced price, fraudulently claiming that he is making the sale to the corporation at the same sum that he himself invested in the property, he can be compelled to disgorge for the benefit of the corporation the profit which he has thus fraudulently made.

434. Payment for Corporate Stock.— When not contrary to the laws of the State, or the by-laws or charter of a corporation, organized thereunder, payment for capital stock may be made in money, property, or services. There is but one rule regulating this payment, and that is that whatever is paid in must be so paid at a fair and honest valuation. In

the absence of fraud or gross overvaluation, the estimate of value placed upon the property by the Board of Directors or the stockholders of the corporation will not generally be disturbed.

435. Dissolution.— A corporation may be dissolved by the expiration of the period limited for its existence by its charter, or by the surrender of its franchises, voluntarily or involuntarily. A corporation may forfeit its charter by mis-user or by non-user. The charter of a corporation is regarded as a contract existing between the corporation and the State under the laws of which the corporation is created. For this reason, only the State itself can compel the surrender of the corporate charter.

436. Trusts.— A trust is a combination of corporations, usually formed for the purpose of controlling prices by stifling competition. When the object of a trust is to raise the price of necessaries by controlling all of the sources of production, and when the combination is effected by the means of contracts into which the producers have entered, such contracts will be held illegal, and the trust itself will be regarded as a violation of the law.

At the present time, trusts may be lawfully formed by corporations, engaged in similar enterprises, selling their property and franchises to one gigantic corporation, possessing sufficient capital to absorb them all, and thus at once destroying the competition which springs from the separation of interests, and placing the management of the entire industry under one economical system with one executive head. It is

claimed for such trusts that by the increased volume of the goods produced, and the lessened cost of management, the price of the product is reduced, and that the general public thereby derives a benefit. It is probable that the commercial history of the next half century will fully demonstrate the truth or the fallacy of this theory.

BOOK FOUR.

THE TRANSFER OF TITLE TO PROPERTY.

CHAPTER I.

THE SALE OF PERSONAL PROPERTY.

"Let the purchaser beware."—*Legal Maxim.*

437. Kinds of Property.
438. Sale.
439. Delivery of Property.
440. Delivery to a Carrier.
441. Delivery of Wheat at Warehouses.
442. Stoppage in Transitu.
443. The Vendor's Lien.
444. Contracts Retaining Title.

437. Kinds of Property.—For convenience, property may be divided into two classes, real estate and personal property. Real estate refers to lands and property attached to lands. Personal property refers to things movable. Personal property may be so attached to land as to become real estate. The intention with which personal property is affixed to real estate, governs the question as to whether the personal property loses or retains its character as such. For example, if the purchaser of heavy machinery which is attached to the building wherein it is placed, gave a chattel mortgage back for the purchase price, the fact of the giving of the chattel mortgage would be regarded as proof that the purchaser intended the machinery to remain personal property. If the purchaser of such property affixed it immovably to the real estate, and did nothing to

indicate the intention to the contrary, the property would become real estate by virtue of such attachment.

438. Sale.—A sale is the transfer of title in property from one person to another. No person can sell that which he does not own. The purchaser of personal property, must, at his own peril, ascertain whether or not the seller has a right to sell. It is a general rule that anything which is the subject of ownership is the subject of sale. A man may sell whatever he owns. Anything which is the subject of sale may be mortgaged, and mortgaged property may be sold subject to the mortgage. It is usual, however, in chattel mortgages, to provide that the mortgagee may immediately foreclose the mortgage in case the mortgagor sells or transfers any of the mortgaged property. A sale is not complete without delivery of the property sold.

439. Delivery of Property.— Delivery of property may be either actual or constructive. Actual delivery is that which is accomplished by passing the possession of the property sold, from the vendor to the vendee. Constructive delivery is accomplished by passing from the vendor to the vendee some evidence of the title to the property sold, which evidence exists separate and apart from the property itself. Thus, a car load of wheat may be delivered by the delivery to the vendee of the Bill of Lading representing the same. It has been frequently held that where a bank advances money upon a Bill of Lading, it becomes the actual purchaser of the property represented thereby.

440. Delivery to a Carrier.— In case goods are delivered to a common carrier, whether such carrier has been designated by the purchaser or not, the delivery to the carrier is regarded in law as delivery to the purchaser.

Illustration.— Hays orders goods from Boyd, and after Boyd had placed the goods in the hands of a common carrier for transmission, Hays sent a dispatch which Boyd received, and which read as follows: "Do not ship goods. Order countermanded." To this message Boyd replied by wire: "Goods have been shipped. Receive them and await instructions." Hays received the goods and placed them in his stock, where he held them, awaiting Boyd's orders. Boyd brought suit for the purchase price, and recovered it on the ground that the goods had been delivered by Hays by the act of delivering them to the common carrier, and that after such delivery had been made, no countermand of the order could be interposed.

441. Delivery of Wheat at Warehouses.— It is customary for farmers to deliver their wheat for storage at warehouses. Unless the owners of the warehouses are men of financial responsibility and character, this custom is one of very great hazard, and, in the past, it has been found productive of many serious losses to the depositors of the grain.

When wheat deposited in a warehouse is destroyed by fire or other causes, it frequently becomes a question as to whether the delivery to the warehouseman constituted a bailment, or a sale. The rule is that if wheat has been delivered, to be returned to the depositor upon payment by him of fixed storage charges, the transaction constitutes a bailment and

not a sale. If the grain is to be returned, not specifically, but by the return of a like quantity and quality of grain, according to an established custom known to the depositor, the transaction constitutes a bailment and not a sale. If the contract under which the grain is deposited contemplates that no grain is to be returned, but that the depositor is to receive, instead, the value of the grain at a price thereafter to be agreed upon according to a certain standard of price, such transaction constitutes a sale and not a bailment. Where grain delivered as a bailment is destroyed, the warehouseman will not be liable for its loss, unless such loss was occasioned by his negligence. But when grain is delivered under a contract of purchase, the warehouseman being its purchaser, he, and not the depositor, must bear the loss, in case of its destruction.

442. Stoppage in Transitu.— Notwithstanding the fact that delivery of goods to the carrier is delivery to the purchaser, the vendor has a right, after delivering goods to a carrier, and at any time before such goods pass into the vendee's possession, to intercept the delivery of such goods upon discovering that the vendee has by any means become insolvent. This is called the right of stoppage *in transitu*, and it is exercised by means of an order from the vendor to the carrier, forbidding the carrier to make delivery of the goods to the vendee. If the carrier disregards such order, and proceeds to deliver the goods, he will be liable for any resultant loss. After the goods have passed into the hands of the

vendee, or his agent, it is too late to exercise the right of stoppage *in transitu*.

443. The Vendor's Lien.— The seller of goods has always an equitable lien thereupon for the purchase price. It is provided by the laws of some States that this lien may be asserted by filing a notice that such lien is claimed. This notice is usually filed in the same manner as a chattel mortgage, and is given the same effect. Goods are not usually exempt from levy by execution issued upon judgments rendered for the purchase price of the goods upon which the levy is made.

444. Contracts Retaining Title.— Title to goods does not always pass by delivery of the goods. An agreement between vendor and vendee that the title to the goods shall remain in the vendor until the purchase price shall have been fully paid is generally sustained by the courts. When a vendee holds goods under such an agreement, he can not sell them to another until the purchase price has been fully paid. He can not convey any title to another, because he has no title to the goods himself. The original vendor may recover them back from the hands of an innocent purchaser, who has given value for them.

Illustration.— Ames sold Blaine a bicycle, under an agreement that the title should not pass to, nor be vested in, Blaine until the purchase price of the bicycle had been fully paid. Before complying with this condition, Blaine sold the wheel to Graves, who was ignorant of the facts, and, supposing that Blaine

had procured the title of the wheel, paid Blaine its full value. Ames, upon discovering what had been done, went to Graves, and demanded payment of the balance due, or possession of the wheel. Both demands were refused. Ames then replevied the wheel, and the court sustained his right so to do. Thereupon Graves caused Blaine's arrest for obtaining money under false pretenses, and Blaine, rather than suffer the penalty of the law, restored Graves the sum which he had fraudulently obtained.

CHAPTER II.

CONVEYANCES OF REAL ESTATE.

"Delivery makes the deed speak." — *Legal Maxim.*

445. Kinds of Deeds.
446. Deeds Made by Public Officers.
447. The Form of a Deed.
448. Delivery.
449. Descriptions of Real Estate.
450. How Description May Be Procured.
451. Government Survey.
452. The Arrangement of Townships.
453. Sections and Descriptions.

445. Kinds of Deeds.— The title to real estate is conveyed by means of instruments called deeds. There are two kinds of deeds in common use; warranty deeds and quit claim deeds. A warranty deed is one in which the grantor warrants that his title to the property is perfect and unclouded. If the purchaser under a warranty deed is disturbed in his peaceable possession of the property thus conveyed to him, he may recover from the grantor the damages he has sustained. A quit claim deed is one in which the grantor merely conveys such title as he possesses, without warranting the extent of that title, or that he has any title at all. Quit claim deeds are used —

(a) For the conveyance of property in which the grantor claims no title,

(b) For the conveyance of incumbered property,

(c) For the conveyance of property, the title to which is imperfect or in dispute,

(d) By heirs and other joint owners in making partition of real estate,

(e) In removing clouds which have been cast upon titles by misdescriptions,

(f) In all other cases where the grantor seeks to part with whatever interest he may own in real estate without warranting the extent of his interest.

446. Deeds Made by Public Officers.— When land is taken upon execution or by the foreclosure of a mortgage, or for the non-payment of taxes, it is advertised and sold, and a deed is executed to the purchaser. A sheriff's deed, or a commissioner's deed, or a tax deed, has no greater force than a quit claim deed, and merely amounts to this, that if all the precedent legal conditions have been complied with, the interest of the execution debtor, or of the mortgagor, or of the tax debtor, will be vested in the grantee, subject to whatever right of redemption is provided by law. If the proceedings are irregular, the deed will be void. If the title of the mortgagor was defective at the time he gave the mortgage, the deed given by the sheriff or commissioner on foreclosure will be likewise defective. If the execution debtor whose lands have been levied upon held such lands under a defective title, the purchaser of the lands at the execution sale will acquire no better title than that which was possessed by the execution debtor. If the proceedings by which a tax is levied

are materially irregular, the tax deed will be void. A void deed confers no rights upon the grantee. If he takes possession under it, he becomes a trespasser.

447. The Form of a Deed.— The statutes of the several States provide the general essentials of deeds. It is usually required that the deed shall specify the name and residence of the grantor and grantee, together with an accurate description of the lands conveyed, and statement of the consideration for which the conveyance is made, and a covenant of warranty, if the deed is a warranty deed. When signed by the grantor, witnessed and acknowledged before a notary public, or other officer having authority to take acknowledgments, the deed becomes a valid conveyance.

448. Delivery.— A deed becomes operative only when delivered by the grantor or his agent to the grantee or his agent. An undelivered deed is inoperative, hence the legal maxim, "Delivery makes the deed speak."

449. Descriptions of Real Estate.— It is essential that the description of the property sought to be conveyed be accurate. In parts of the country where no government survey has been made, descriptions are commonly set forth by "metes and bounds;" that is, the description is commenced at some natural landmark, and is run thence by a straight line to some other natural landmark, and so on, until the property has been bounded by imaginary lines, the limitations of which are ascertained by

fixed landmarks and measurements. The difficulty with this form of description is that it is dependent upon natural objects which are subject to destruction or removal. For example, a description beginning at an oak tree, and running thence east twenty rods to a round stone, thence south forty rods to the intersection of two streams, thence west to a pine stump, and thence north to the place of beginning, would be rendered uncertain and vague by the destruction of the tree, the removal of the stone, the change of the course of the intersecting streams, or the decay of the pine stump.

450. How Description May Be Procured. — In the absence of a known or available legal description of land, it is always best to ascertain the exact boundaries of the lands conveyed, by causing a survey to be made and by constructing a description from the field notes of the surveyor. This will furnish such a description that the lands can be accurately located at any time by any other surveyor, and the purpose of description is accomplished when such data has been secured that the lands can be permanently and accurately located by reference to it.

451. Government Survey. — In most of the States, a government survey has been made by which all lands have been divided into sections, quarter sections, and forty-acre tracts, with fixed boundaries. These boundaries are ascertainable both from stones planted in the ground, stakes driven, landmarks fixed, and from field notes of the government surveyors which have been preserved in the public archives.

Under the government survey the States are laid off into squares, called townships, which are, as nearly as may be, six miles square, containing thirty-six square miles. Each square mile is called a section, and is numbered. The sections are numbered from one to thirty-six inclusive, beginning at the northeast corner and running west, section 6 being at the northwest corner of each township, and section 7 falling under section 6; this system is followed throughout the entire township, section 13 falling under section 12, section 19 falling under section 18, section 25 falling under section 24, section 31 forming the southwest corner of the township, and section 36 forming the southeast and final section of the township. Each section is subdivided into quarter-sections, and each quarter-section is again subdivided into quarters. The smallest tract into which land is divided by the government survey is forty acres, but for convenience, the forty-acre tracts are often re-divided into descriptions based upon the government survey.

452. The Arrangement of Townships.— Townships are arranged according to lines established at right angles to each other, running north and south and east and west. The lines running north and south are called meridian lines, and the lines running east and west at right angles to the meridian lines are called base lines. There are one or more meridian lines, and one or more base lines established for each State having a government survey. All accurate descriptions of property are made with reference to these lines. The point where the

meridian lines cross the base line is the point of beginning for the numbering of townships. Each township is numbered according to its position east or west of the meridian line, and is further designated by its position north or south of the base line. The township lying east of the meridian line and south of the base line, and having its northwest corner at the point of intersection of the meridian and base lines, would be called township one, south, of range one, east. The township lying next east of the one just described, would be township one, south, of range two, east, and so as we progress away from the meridian line, the townships are consecutively numbered. In like manner as we progress north and south of the base line, the townships are characterized as being in a certain tier, or range, as it is called, either north or south of the base lines, as the case may be. For example, if we proceed north to the tenth tier of townships, north of the base line, we find that all of the townships in that tier are numbered "ten north." If such township is in the eighth tier of townships west of the meridian line, it is described as "township ten, north, of range eight, west." Thus all townships are described by their position with regard to the meridian and base lines.

453. Sections and Descriptions.—As we have seen, each full township is divided into thirty-six sections, each of which is one mile square, and contains six hundred and forty acres. Each full quarter section consequently contains one hundred and sixty

acres. Suppose we wish to describe a quarter section of land lying in the southwest corner of section ten, in a township which is in the sixth tier of townships south of the base line, and in the seventh tier of townships west of the meridian line, in the township of Whitewood, County of Blank, State of Michigan, the description would be as follows: "All that certain piece or parcel of land situate and being in the township of Whitewood, County of Blank, and State of Michigan, described as the southwest quarter of section 10, in township 6, south, of range 7, west, comprising a tract of one hundred and sixty acres of land, more or less."

Again, suppose that we desire to describe forty acres lying in the northeast corner of the lands above specified. The description would be the same as the foregoing, with the exception that after stating the name of the town, county, and State, it would read, "described as the northeast quarter of the southwest quarter of section 10, in township 6, south, of range 7, west, containing forty acres of land, more or less." All other subdivisions of this section, or of any section, would be described on the same principle.

CHAPTER III.

ABSTRACTS OF TITLE.

"The law protects the vigilant, not the negligent."
—*Legal Maxim.*

454. Abstracts of Title.
455. The Examiner's Duty.
456. Examination of an Abstract.
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458. Unreleased Dower Interests.
459. Questions Raised by Conveyances by Quit Claim Deeds.
460. Administrator's Deed.
461. Sheriff's Deed.
462. Undischarged Mortgages.
463. Conveyance by Power of Attorney.
464. Procurement of Abstract.

454. Abstracts of Title.—The purchaser of real estate should always inform himself definitely with reference to the condition of the title to the lands that he is about to purchase. This information is usually most readily derived from a reliable abstract of title, setting forth briefly the names of the persons who have owned the property, the time and manner in which they have conveyed the same, together with a statement of the liens that have from time to time encumbered it. The value of an abstract of title depends upon the care with which it is made.

An abstract carelessly compiled is unsafe and often misleading.

455. The Examiner's Duty.— The first duty of one who examines the abstract of title is to assure himself of the reliability and skill of the person by whom the abstract was made. This being done, his next duty will be to ascertain that the description of the property covered by the terms of the abstract is identical with the description of the property with regard to which he is seeking information. Next, he should notice whether or not the abstract has been corrected and brought down to the date at which he makes the examination. This is important, as a great many changes may occur to the title to the property in a very short space of time. One who purchases property should assure himself that between the time at which the abstract ends and his title begins, no mortgages, liens, or conveyances have intervened. When the authorship, description, and date of the abstract have been found to be satisfactory, a detailed examination of the abstract should follow. Unless the purchaser is acquainted with the business of examining titles, he should delegate this part of the task to some competent person. He should not be satisfied to have the work done by one who is incompetent merely because such person will perform the labor for a small price, or because such person is conveniently near. A certificate made by the average recorder, or register of deeds, setting forth that he "has examined the abstract, and finds the same to be correct," or setting forth that he "has

examined the books and records appearing in his office, and finds that the title is apparently vested in fee simple, and free from incumbrances in the grantor," usually amounts to little or nothing, unless such officer is an expert in the line of investigation which he has undertaken, and has given the particular title in question thorough and exhaustive examination. An examination of an abstract of title made by an incompetent person is of no value, and amounts merely to a source of danger.

456. Examination of an Abstract.— Suppose an abstract in the following form to be placed before the reader: —

South Half of Section Twenty, Blank County, State of Michigan.

I. Entered by John Smith, and patented by the United States to him, May 20, 1840.

II. John Smith to William Jones, warranty deed, May 21, 1840.

III. William Jones and wife to Anthony Hope, quit. claim deed, Aug. 1, 1875.

IV. Anthony Hope, by administrator, to Charles Gray, administrator's deed, Sept. 15, 1880.

V. Charles Gray, by sheriff, to William Young, sheriff's deed, on execution sale, March 19, 1890.

VI. William Young to Amos Young, mortgage, March 20, 1890.

VII. William Young by sheriff to Samuel Adams, sheriff's deed on foreclosure of above mortgage, April 2, 1896.

Supposing the abstract to show that all of the foregoing conveyances have been duly recorded (the

statement to this effect having been omitted from the entries above made for economy of space) it does not show that any of them have been executed with the proper legal formality; it does not show that any of them have been properly signed, sealed, witnessed, or acknowledged. The above abstract shows a chain of title which apparently vests the fee in Samuel Adams, and yet between the lines there may be read unmistakable evidences of danger. Let us consider the abstract transfer by transfer.

457. Entry. (I).— The fact that the land was entered by John Smith is not evidence that it had not been previously entered, wholly or in part, by some other person who afterward perfected his title and received a patent from the government. Experience has demonstrated that mistakes frequently occur in government records, and overlapping claims have been the fruitful source of litigation. The question also arises whether or not the government had any authority to grant a patent of this particular land, and all these questions must be investigated before it can be positively known that John Smith acquired title to the lands alleged to have been patented by him.

458. (II) Unreleased Dower Interests.—The fact that John Smith conveyed by Warranty Deed to William Jones is not evidence that there was a perfect title vested in either of these parties. The question arises, Did John Smith have a wife, and was he married at the time, or before the time, of the execution of the deed to Jones? If he was married, is his wife still living? If he was married at the time, he

conveyed the land to Jones, and if his wife still lives, her dower interest in the land constitutes an imperfection in the title, and a quit claim deed from her should be procured.

459. Questions Raised by Conveyances by Quit Claim Deeds. (III)— The fact that William Jones and wife joined in executing a quit claim deed to Anthony Hope indicates that there was some fault in their title at that time. The probabilities are that Anthony Hope would not have received a quit claim deed, could Jones have been induced to execute a better deed. The fact that Jones executed a quit claim deed, unless explained, gives rise to a strong presumption that he did not have a perfect title. This imperfection of title may have arisen by reason of the fact that there were tax levies, execution levies, unpaid mortgages, or mechanics' liens attached to the property at the time of the conveyance, and the examiner should ascertain whether such was the case, and if so, whether or not such incumbrances have been discharged. The fact of the quit claim may also be accounted for on the theory that Jones knew of the dower right possessed by John Smith's wife, who, as we remember, did not join in the deed of Smith to Jones. These unexplained circumstances should place the examiner of the title upon inquiry, and he should not be satisfied until he is able to account for all of these peculiarities in the abstract.

460. Administrator's Deed. (IV)— The fact that the property was deeded by an administrator to Charles Gray, gives rise to the presumption that

Anthony Hope died leaving no will. This conveyance can be explained and justified only by the records of the probate court. If there was a valid will, otherwise disposing of the property, or if there were legacies or bequests remaining unpaid, and forming a lien on the lands, or if the administrator was not authorized to sell the property, or if the administrator was not duly appointed, the conveyance would be imperfect. Likewise, if there have been no proceedings to adjust and bar the claims of creditors against the estate, the conveyances would be subject to the claims of such creditors so long as such claims remained in force. If Anthony Hope died leaving minor heirs, the legality of all proceedings whereby their interests are affected should be strictly scrutinized; for it should be remembered that the law, so far as possible, cares for the interests of those who are unable to care for themselves. In short, a perfect title can be procured through the administrator only when the administrator has authority to sell, and the lands purchased are unincumbered either by express liens or by debts of the deceased. It is the duty of the examiner of the title to ascertain either that these conditions prevail, or that so long a time has elapsed since the conveyance was made, that any claims against the lands conveyed have been barred by limitation.

461. Sheriff's Deed. (V) — It appears by the abstract that William Young obtained his title by sheriff's deed. The value of this title depends upon the regularity of the proceedings under which the

sale was made, and the condition of the title upon which the sheriff levied. If the proceedings have all been legal, the deed would merely substitute Mr. Young to the title held by Charles Gray as it existed at the time of the levy.

462. Undischarged Mortgages. (VI)— From the abstract it appears that a mortgage was executed by William Young to Amos Young, and that the same has not been discharged. It also appears by Entry VII of the abstract that the same lands were sold by sheriff on foreclosure of the above mortgage to Samuel Adams, in whom the title of the lands in question appears now to be vested. The files and records of the court should be examined for the purpose of ascertaining whether the proceedings by which the mortgage given by William Young was foreclosed, were regular. If it is found that William Young at the time of the execution of the mortgage to Amos Young owned the lands in question in fee simple, and free from incumbrance, and if, in addition to that fact, it is ascertained that all of the proceedings for the foreclosure of the mortgage executed to Amos Young were legal, and that the property was bid in, and paid for by Samuel Adams, and that the title in him has been confirmed, the examiner of the abstract will be justified in the conclusion that Samuel Adams will be capable of executing a valid deed of the property described in the abstract.

463. Conveyance by Power of Attorney.— Frequently an abstract will contain an entry which indicates that conveyance was executed by the

grantor, not in person, but by attorney. The question then is, Did the attorney have authority to execute the conveyance? This question can be answered only by reference to the written power of attorney, under which the attorney who executed the deed assumed to act, or from proof that the act of the attorney was ratified by the grantor who had full knowledge of the facts.

464. Procurement of Abstract.— Every purchaser should require the grantor to furnish him an abstract of title, corrected up to the date of the transfer. The grantee may rest assured that if he waives the production and delivery of an abstract, he himself, when he seeks to sell the same property, will be put to the expense of procuring an *entire* abstract, instead of merely having to correct a previously procured abstract to the date of sale.

CHAPTER IV.

CONVEYANCE BY WILL.

"A will is to be construed according to the intention of the Testator."—*Legal Maxim.*

465. The Nature of a Will.
466. Who May Make a Will.
467. The Form of the Will.
468. Witnesses.
469. When a Will May Be Made.
470. Non-Contestability Clause.
471. Codicils.
472. Destruction of a Will.

465. The Nature of a Will.— A will is a conveyance of property to take effect immediately upon the death of the testator. Until the death of the testator, the will remains inoperative. At any time before death, the testator may revoke or reform his will at pleasure, and no one has any right to complain. A will operates as a conveyance, and, after the death of the testator, stands in lieu of a deed, and operates to convey to the devisee the real estate therein devised.

466. Who May Make a Will.— Any person of full age and sound mind may make a will. The age at which one may make a will is usually twenty-one years, but the statutes in several States provide that women may make wills on arriving at the age of eighteen years. The soundness of mind requisite for

the legal execution of a will is not as great as that required for the execution of a contract. The will of a person whose mental faculties have become very much impaired will be sustained, provided it clearly appears that the instrument is the will of the testator, and not the will of some other person who has exerted an undue influence over the testator. A person who is deaf, dumb, and blind may make a binding will, and wills are frequently made by persons during the last hours of life.

The capacity requisite for the execution of a will varies according to the kind and amount of property to be distributed. It requires a higher order of capacity to make a will, disposing of large and involved interests, than is required to make a will disposing of small and simple interests.

The theory that less mental competency is required for the execution of a will than is necessary for the execution of a contract is based upon the fact that a will is usually drawn by the testator in private and with the assistance of legal counsel and apart from any influences that might conflict with the free expression of his desires.

467. The Form of the Will.— There is no special form of expression required in a will. Any instrument by which a testator clearly indicates what disposition shall be made of his property after death, will be regarded as sufficient, provided it is properly signed, sealed, and witnessed. A will in the following simple form, properly signed, sealed, and witnessed, has been held good: "I hereby leave all of my property to my wife."

The will should clearly state the names of the beneficiaries. It should be couched in simple, clear, and unmistakable terms. The testator should constantly remember, when drafting his will, that the instrument will be construed according to the language he employs, and that he will not be present at the time when the will is construed for the purpose of explaining what he may have meant by ambiguous terms. A will may be in the following form: —

I, William White, being of full age, and of sound mind and memory, do hereby make, execute, publish, and declare this my last will, and testament, as follows, to wit: —

First. — I hereby direct that all of my just debts and funeral expenses shall be first paid.

Second. — I hereby give, devise, and bequeath unto my wife, Laura White, all of the household goods, wares, stores, fixtures, and furniture, being at the time of my death in the dwelling-house now occupied by us. I further devise unto my said wife the homestead now occupied by us, described as the northeast quarter of the northeast quarter of section 10, in township 6 south, range 9 west, in the county of Blank, State of Michigan.

Third. — I hereby give, devise, and bequeath unto my son, Ernest White, all those certain farming tools and implements of every nature whatsoever that shall be at the time of my death upon my farm described as the northwest quarter of section 9 in township 3 south, range 2 west, in the county of Blank, State of Michigan, together with all of the horses, cattle, sheep, and swine, and all other live stock and poultry upon the said farm being at the date of my death. I further bequeath unto my said son, Ernest White, 50 shares of the capital stock of the Blank County Savings Bank, and 20

shares of the capital stock of the Merchants' Co-operative Association of Detroit.

Fourth.—I hereby give, devise, and bequeath unto my son, Louis White, all the remainder and residue of my estate, of which I may die seized, and to which I shall be entitled at the time of my death, after payment of my debts and full settlement of the devices and bequests hereinbefore made.

Fifth.—I hereby appoint my son, Louis White, executor of this will.

Sixth.—I hereby revoke all former wills by me made.

In testimony whereof, I have hereunto set my hand and seal this first day of June, A. D. 1900.

William White (L.S.)

We, the subscribers hereto, on the day last above mentioned, having no interest in any provisions of the foregoing will, and at the request of William White, the above-named testator, who, in our presence, signed and sealed the foregoing instrument, and published and declared the same to be his last will and testament, did, in the presence of each other and in the presence of said William White, and where he could see us write our names, subscribe our names hereto as witnesses.

James Lewis, address, Detroit, Mich.
William Miller, address, Monroe, Mich.
William Lane, address, Kalamazoo, Mich.

468. Witnesses.— A will is worthless if not properly witnessed. In most States two witnesses are necessary, and, in some, three are required. It is usually necessary that they shall subscribe their names to the will at the request of the testator and in his presence. In some States it is necessary that they should sign in the presence of each other. The laws of some States require that the testator shall declare the instrument to be his last will.

The testator should not permit any person having an interest in the will to witness the same, as in such case the witness thereby forfeits all of his rights under the will. The forfeiture does not render the will void as to any one else, but the share which would otherwise have gone to the person sustaining the forfeiture must generally be distributed among the heirs according to the provisions of law as though no will had been made. It is a wise precaution for the testator or some person present to call the attention of the witnesses to the fact that they will be expected to have knowledge of the genuineness of the signature of the testator, and of the fact that they were requested by the testator to sign the will as witnesses, and that they signed such will in the testator's presence.

469. When a Will May Be Made.— A will may be made at any time, and will not be void because executed on a legal holiday, or on Sunday.

470. Non-Contestability Clause.—Whenever it is feared by the testator that his will may be contested, it is wise for him to insert a provision, directing that any person or persons who shall contest the validity of his will, or any part thereof, shall be thereby excluded from participation in any of the proceeds of his estate, and that the portion which otherwise would have belonged to such person, shall be distributed equally (or otherwise) among the heirs who do not contest such will.

471. Codicils.— A will may be amended at any time before the death of the testator, by adding

thereto such other and further provisions as the testator may desire. Such addition is called a codicil. A codicil must be executed with the same formalities that are required by law for the execution of the original will. The codicil should refer to the original will, and should be specific in all its provisions.

472. Destruction of a Will.— A will, after having been once duly executed, is effective until destroyed, or revoked. Its destruction can be accomplished only by burning, tearing, canceling, or obliterating. The revocation of a will is effected by the execution of a later will. If a person dies without leaving a will, he is said to die intestate, and his estate must be distributed among his heirs according to the provisions of statute law.

BOOK FIVE.

THE LAW OF PATENTS, TRADE-MARKS, CAVEATS, AND COPYRIGHTS.

CHAPTER I.

PATENTS, CAVEATS, AND TRADE-MARKS.

"He who is first in time, is preferred in right."— *Legal Maxim.*

473. The Purpose and Nature of a Patent.
474. Duration of the Protection.
475. Practical Points on Patent Law.
476. Correspondence with the Patent Office.
477. Copies of Patents.
478. What Is Patentable.
479. Art.
480. Machinery.
481. Manufacture.
482. Composition of Matter.
483. Want of Utility.
484. The Application.
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490. Examination.
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492. Appeals.
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499. Contents of Caveat.
500. Where Filed.
501. Duration.

502. A Trade-mark Defined.
503. The Uses of Trade-marks.
504. Common Law Trade-marks.
505. Statutory Trade-marks.
506. Cost.

473. The Purpose and Nature of a Patent. —A patent is a grant of a special privilege by a government to an individual. The purpose of patents, as applied to inventions, is to encourage inventors, by enabling them to enjoy for a period of years the exclusive right to the fruits of their labor and genius.

474. Duration of the Protection.— In the United States, the protection afforded by a patent, extends, excepting in special cases, over a period of seventeen consecutive years, dating from the time of issue of the patent.

475. Practical Points on Patent Law.— The United States grants, under certain conditions, letters patent for the protection of an individual's rights to any original invention he may produce.

It is often of importance to a person that he be able to form a relatively correct estimate of the merit or value of letters patent. This value depends not only upon the intrinsic merit or value of the invention protected by such patent, but its value is most materially affected by claims previously allowed on other similar devices, such claims having been disallowed or avoided in forming the one under consideration.

Patents are granted without reference to the money value or merit of the device. The examiners at Washington merely determine from their records

whether the features of the device for which protection is asked are novel, and whether they have been previously patented or used.

It is usual in applying for the patent to make several claims covering different points, or the same point under different forms. These claims may all be allowed. They may all be denied. They may be allowed in part, and denied in part, dependent upon whether they do or do not conflict with claims allowed on some other invention.

An invention may be original in all parts and valuable. It may be original and valueless. It may be original in major parts and these patentable. It may be original only in minor parts, and these patentable. It follows therefore that the phrase "it is patented" may mean much or little.

When a patent lawyer is asked to secure a patent for an invention, he will, if trustworthy, have an examination made at Washington, and secure copies of all patents already granted bearing directly upon the device of his client. These copies tell him "the state of the art;" that is, they enable him to judge in a degree as to what claims he can get allowed. It is of the greatest importance that the exact state of the art be known to every person who is to be affected financially by the invention under consideration.

Before an inventor puts time or money into the production of an invention, he should ascertain the state of the art; in other words, he should find out what others have done in the same field.

Before any person puts money into a company

for the manufacture of any patented device for profit, he should learn the relative value of the letters patent, or the state of the art up to date. This is best accomplished by having a reliable patent attorney secure copies of all patents in that particular line. These copies will show cuts of the device, and at the end of each paper will be found all the claims numbered. With the assistance of the attorney, it is well to compare these with the patent under consideration.

476. Correspondence with the Patent Office.— All correspondence with the patent office should be addressed to the Commissioner of Patents, Washington, D. C. The patent office will not answer inquiries as to the novelty of an alleged invention, nor give advice relative to the filing of an application for a patent, nor will it answer inquiries made with a view to ascertaining whether contemplated improvements have been patented. It will not act as expounder of the patent law, nor as counsel for individuals. Of the propriety of making an application for the patent, the inventor, assisted by his attorney, must judge for himself. The office is open to him, and its records and models pertaining to all patents may be inspected by him or his attorney. In addition to this, he can procure copies of such patents as have been made along lines similar to this in which he is interested.

477. Copies of Patents.— The Commissioner of Patents will send, on request, copies of patents at a cost of from three to five cents each. In fields of

invention that have been the subject of interest for many years, the number of patents is very large.

For the benefit of those who wish to help themselves in securing copies of letters patent, we give a few forms which may be of assistance. Always address the envelope to the Commissioner of Patents, Washington, D. C. No return stamp need be inclosed. Two or three weeks may be required before a reply may be received.

FORM 1.

TOLEDO, OHIO, June 1, 1900

Commissioner of Patents,
Washington, D. C.

DEAR SIR: Will you kindly state the cost of copies of all patents that have been granted on barn-door roller hinges, and oblige,

Yours respectfully, PETER SMITH.

FORM 2.

BOONESVILLE, WIS., July 3, 1900.

Commissioner of Patents,
Washington, D. C.

DEAR SIR: I am inventing a lamp designed to generate gas from gasoline under pressure, and to produce the white light of a Wellsbach burner. Will you kindly let me know the cost of copies of all patents already granted in this field.

Respectfully, JAMES KENNEDY.

FORM 3.

SMITHVILLE, KY., May 30, 1900.

Commissioner of Patents,
Washington, D. C.

DEAR SIR: I have invented a toy, and send you inclosed a rough drawing of the same. It consists of a metal ring, a stick

with a short cross piece near the end, and a cord attaching the ring to the stick. By a slight swinging motion, the ring is tossed in the air, and the trick is to catch the ring on the end of the stick. Please let me know the cost of copies of all patents already granted on similar devices.

Respectfully, HENRY JONES.

478. What is Patentable.— A patent may be obtained upon any new and useful —

(a) Art,

(b) Machine,

(c) Manufacture,

(d) Composition of matter,

(e) Or any new and useful improvement thereof, providing the same has not been previously known or used by others in this country, or patented or described in any publication printed in this or any foreign country prior to the date of application, and providing the same has not been in public use or on sale in the United States for more than two years prior to the date of application, unless the same is proved to have been abandoned. Not everything that is new is patentable. A mere discovery can not be patented. A principle is not patentable. It is the means or methods of seizing upon principles and applying them to new and useful purposes that can be patented.

Illustration.— The discovery that electricity, under certain circumstances, yields light, could not be patented, but the means whereby electricity could be made to yield a constant light, useful for the purposes of illumination has been patented in many forms.

479. Art.—(a) In patent law, the term "Art" refers to those methods or processes that may be carried on by hand, without the use of any especial machinery. The mode, method, or process of tanning a skin and rendering it specially suitable for certain commerical purposes by subjecting it to specified baths, would be termed an "Art."

480. Machinery.—(b) A machine is an assemblage or combination of mechanical parts adapted to receive, transmit, or modify force for the performance of work. For example, a printing press, a steam pump, a typewriter, or a bicycle would be within the terms of the definition.

481. Manufacture.—(c) A manufacture is an article made as a finality. It is distinguished from machines by having no rule of action. It is distinguished from compositions of matter by reason of not involving the relation of ingredients. For example, a pen, a plow point, or a ruler would be a manufacture.

482. Composition Matter.—(d) A composition of matter is a compound of several ingredients forming a homogeneous mass. Ink, glue, and like substances are within the definition.

483. Want of Utility.—While it is necessary that an invention must not only be new, but must be useful as well, to entitle the owner to the issuance of a patent thereupon, the patent office rarely raises a question of utility. In extreme cases where the invention is in controvention of the purpose which it seeks to accomplish, a patent will be denied on the ground of the want of utility.

484. The Application.—The application for a patent is made by means of a petition which is properly accompanied by specifications, the sworn statement of the petitioner, and by such drawings as are necessary for the explanation of the thing upon which a patent is sought.

485. The Petition.— The petition must be addressed to the Commissioner of Patents, and must state the name and residence of the petitioner requesting the patent. It must designate by title the invention sought to be patented, and must refer to the specifications for a full disclosure of such invention. It must be signed by the applicant, and may contain a power of attorney, authorizing the attorney of the inventor to prosecute the claim. The petition may be in the following form:—

To the Commissioner of Patents:—

Your petitioner, William Smith, a citizen of the United States, residing at Chicago, in the County of Cook, in the State of Illinois, prays that letters patent may be granted to him for a new and useful improvement in lamps, set forth in the inclosed specifications: He hereby appoints Howard Williams, of said city of Chicago, his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and transact all business in the patent office connected therewith. William Smith.

Dated, May 1, 1900.

486. The Specification.— The specification is a written description of the invention or discovery, and of the manner of making, constructing, compounding, and using the same, and is required to be in such

full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, and with which it is most nearly connected, to make, construct, compound, and use the same.

The specification must set forth the precise invention for which patent is solicited, and explain the principle thereof and the *mode* in which the applicant has contemplated applying that principle, in such manner as to distinguish it from other inventions.

In case of mere improvements, the specification must particularly point out the parts to which the improvements relate, and must, by explicit language, distinguish between what is old and what is claimed as new; the description and drawings, as well as the claims, should be confined to the specific improvements.

The specification must conclude with a specific and distinct claim (or claims) of the particular improvement or combination which the applicant regards as his invention or discovery. When there are drawings, the description must refer to the different views by figures, and to the different parts by letters or numerals, preferably by the latter.

The following order of arrangement should be observed in framing the specification:—

(a) A preamble, stating the name and residence of the applicant, the title of the invention, and, if the invention has been patented in any other country, the country or countries in which it has been so patented, and the date and number of each patent.

(b) A general statement of the object and nature of the invention.

(c) A brief description of the several views of the drawing, if any.

(d) A detailed description of the invention.

(e) The specific claim or claims made by the inventor.

(f) The signature of the inventor.

(g) The signatures of two witnesses.

The specification must be signed by the inventor, or by his executor, or administrator, and the signature must be attested by two witnesses. The full name must be given, and all names, whether of applicants, or witnesses, must be *legibly written.*

Two or more independent inventions can not be claimed in one application, but where several distinct inventions are dependent upon each other, and mutually contribute to produce a single result, they may be claimed in one application.

The specification and claims must be plainly written or printed on but one side of the paper. All interlineations and erasures must be clearly referred to in marginal or foot notes, on the same sheet of paper.

487. Oath.—The applicant, if he is the inventor, must make oath, affirming that he verily believes himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent, and that he does not know, and does not believe that the same was ever before known or used, and the

oath must set forth the name of the State and country of which the applicant is a citizen, naming his place of residence.

In every original application, the applicant must distinctly state under oath whether the invention has or has not been patented to himself, or to others, with his knowledge or consent, in any country, and if it has been, the name of the country in which it has been so patented, together with the date and number of each patent. Such application should also state that, according to the knowledge and belief of the applicant, the invention has not been in public use, or on sale in the United States for more than two years prior to the application in this country.

The oath must be subscribed by the affiant.

488. **Drawings.**—The applicant for a patent is required by law to furnish a drawing of his invention whenever the nature of the case demands it. The drawing should be signed by the inventor, or in the name of the inventor, by his attorney in fact, and must be attested by two witnesses. The drawing must show every feature of the invention covered by the claim.

489. **Models.**— Models should not be furnished unless required by the preliminary examiner. When this officer deems a model necessary or useful, he will notify the applicant of such requirement. When a model is required, the examination will be suspended until the model has been furnished.

The model must clearly exhibit every feature of the machine which forms the subject of a claim of

invention, but it should not include other matter than that covered by the actual invention, or improvement, unless it is necessary to the exhibition of an invention in a working model.

490. Examination.— After an application for patent has been filed, it is examined for the purpose of determining its patentability, at the earliest time at which it is reached in the regular course of procedure. If the claims of the applicant are allowed, he is so informed. If the claims, or any of them are rejected, the applicant is informed of the precise reason of such rejection. If the cause of the rejection can be removed by amendment of the application, the applicant will be permitted to amend, and this he may do as often as the examiner presents new references or reasons for rejection.

491. Interferences.— An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent, will not prevent an interference, for, although the commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who proves to be the prior inventor.

492. Appeals.— Every applicant for a patent, any of the claims of whose application have been twice rejected for the same reasons, upon grounds involving the merits of the invention, such as lack of invention, novelty, utility, or on the ground of

abandonment, public use, or sale, inoperativeness of invention, aggregation of elements, incomplete combination of elements, or, when amended, for want of identity with the invention originally disclosed, or because the amendment involves a departure from the invention originally presented, may appeal from the decision of the Primary Examiner, to the Examiners in Chief. From an adverse decision of the Examiners in Chief, an appeal lies to the Commissioner, and from an adverse decision of the Commissioner, an appeal lies to the Court of Appeals of the District of Columbia.

493. Reissues.— A reissue of the patent is granted when the original patent is inoperative or void by reason of some omission, or defect, provided the error has arisen through inadvertence, accident, or mistake, and without any fraudulent or deceptive intent.

494. Disclaimers.— Whenever, through inadvertence, accident, or mistake, and without any intent to defraud or deceive, an inventor has claimed in his application more than he had a right to claim as new, he may file a disclaimer in writing, signed by himself, and attested by one or more witnesses, and when the same has been recorded in the patent office, it will be recorded as a part of the original specification to the extent of the interest possessed by the claimant, and will be construed to diminish his claims accordingly.

495. Extension.— The life of a patent can be extended only by Act of Congress.

496. Fees.— The following is a schedule of the fees and prices required by the patent office: —

On filing each original application for a patent, except in design cases	$15.00
On issuing each original patent, except in design cases	20.00
In design cases: —	
For three years and six months	10.00
For seven years	15.00
For fourteen years	30.00
On filing each caveat	10.00
On every application for the reissue of a patent	30.00
On filing each disclaimer	10.00
On an appeal from the Primary Examiner to the Examiners in chief	10.00
On every appeal from the Examiners in Chief to the Commissioner	20.00
For certified copies of patents: –	
For specification and drawings per copy	.05
For the certificate	.25
For the grant	.50
For certifying to a duplicate of a model	.50
For manuscript copies of records: —	
For every 100 words, or fraction thereof	.10
If certified, for the certificate, additional	.25
For uncertified printed copies of the specifications and drawings accompanying the same, each	.05
For the same when ordered by subclasses, each	.03
For the same when ordered by classes, each	.02
For the same when the entire set of all patents granted is ordered, each	.01
For recording every assignment, agreement, power of attorney, or other paper of 300 words, or under,	1.00
For the same, if over 300 words and under 1,000 words,	2.00

For the same, if over 1,000 words..... $3.00
For abstracts of title to patents or inventions:—
For the certificate of search..... 1.00
For each brief from the digest of assignments..... .20

497. Assignments of Patents.—The owner of a patent may convey the same by a written assignment. Such conveyance may cover all, or any part, of the United States. The purchaser under the assignment is substituted to all of the rights possessed by the assignor purported to be conveyed by the assignment. To be effective against subsequent assignees, an assignment must be recorded in the patent office within three months after the date of its execution.

498. Caveats.—A caveat is a notice given to the patent office that an inventor has made a new invention or discovery, and desires further time to mature the same before causing it to be patented. The person filing a caveat is called a "Caveator." During the life of the caveat, it is the duty of the patent office to notify the caveator of any applications for patent covering the subject set forth in his caveat.

499. Contents of Caveat.—The caveat must comprise a specification, oath, and, when the nature of the case demands it, a drawing, and like an application for patent, must be limited to a single invention or improvement. The caveat must set forth the object of the invention, and the distinguishing characteristics thereof, and it should be sufficiently precise to

enable the office to judge whether there is probability of interference when a subsequent application is filed for a similar invention.

500. Where Filed.—Caveats are filed in the confidential archives of the patent office, and are required by law to be preserved in secrecy.

501. Duration.—A caveat is operative for one year after the date of filing the same. It may be renewed on request in writing, by the payment of a second caveat fee, which is the same in amount as the first fee. When renewed, the caveat will remain in force for an additional period of one year. Subsequent renewals may be made in the same manner with like effect. If the caveat is not renewed, it will still be retained in the secret archives of the office.

502. A Trade-mark Defined.—A trade-mark is a distinctive mark, motto, device, symbol, or emblem with which a manufacturer marks his goods so that they may be identified and known in the market.

503. The Uses of Trade-marks.—It has been said by very high legal authority, that "it is the object of law relating to trade-marks, to prevent one man from unfairly stealing away another's business and good will. Fair competition in business is legitimate, and promotes the public good, but an unfair appropriation of another's business by using his name or trade-mark, or an imitation thereof, calculated to deceive the public, is justly punishable by damages, and will be enjoined by the courts"

504. Common Law Trade-marks.—Even in the absence of any statute on the subject, every

manufacturer has the unquestionable right to distinguish the goods he manufactures by affixing thereto, or to the packages containing the same, his particular symbol or trade-mark; and when such symbol or trade-mark has been adopted, it becomes the property of such manufacturer, and no other person has a right to assume and use the same.

505. Statutory Trade-marks.—The federal statute providing for registration of trade-marks in the Patent Office is, at present, defective, in that it provides no penalty for counterfeiting a registered trade-mark. For this reason, State registration is generally adopted as a more useful means of protecting trade-marks by means of the severe punishment of infringements provided by State laws. A civil action may be maintained against one who violates a trade-mark whether the same has been registered or not. Registration in the Patent Office confers special advantages in the prosecution of civil actions for infringement. Registration in the several States confers generally, in addition to the civil ation, a criminal action against one who infringes a trade-mark registered under the laws of the particular State.

All the States, except North Carolina and South Carolina, have statutory provisions under which trade-marks may be registered.

506. Cost.—The Patent Office fees for the procurement of the registration of a Federal trade-mark are $25. The cost of registering trademarks in the several States is not uniform.

CHAPTER II.

COPYRIGHTS.

"Scarcely any law can be made which is beneficial to all; but if it benefit the majority, it is useful."—*Legal Maxim.*

507. Copyright Defined.
508. Who May Apply for Copyright.
509. Application for Copyright.
510. Deposit of Copies.
511. Fees.
512. Works in More than One Volume.
513. Notice of Copyright.
514. Penalty for False Notice.
515. Duration of Copyright.
516. Assignments of Copyrights.
517. Periodicals.
518. Copyright in Foreign Countries.
519. Articles Not Subject to Copyright Protection.
520. Infringements.

507. Copyright Defined.— A copyright is an exclusive right granted to the author of an intellectual production to reproduce such production for a term of years.

508. Who May Apply for Copyright.— The author of any literary, musical, dramatic, or artistic work, who is a citizen of the United States, or a subject of any country to whose citizens the United States has extended the benefit of copyright, together with his assigns, is privileged to obtain copyright in the United States.

A translator, and the editor, compiler, dramatist, or abridger of a work, may, under the copyright law, be considered as the author of the translation, compilation, dramatization, or abridgment, and can apply for and obtain copyright entry.

The mere possession of a book, either in manuscript, or printed form, does not of itself give the possessor the privilege of copyright.

509. Application for Copyright.— Formal application for copyright should be made by filling up the application blank *which will be furnished by the Copyright Department on request*, and by mailing the same, together with the required fee, addressed to the Librarian of Congress, Copyright Department, Library of Congress, Washington, D. C. The application should always be accompanied by a title-page. Preferably a printed title-page of the book or other article should be sent; or in lieu thereof, a third copy of the article. If the printed title-page can not be sent, the title should be typewritten, and should be worded exactly as it is proposed to print the title of the published book or other article. Written titles can not be accepted.

510. Deposit of Copies.— Two copies of the best edition of the work sought to be copyrighted must be personally delivered at the office of the Librarian of Congress, at Washington, D. C., or deposited in the mail, addressed to said Librarian, *before any copies of the work have been distributed.*

511. Fees.— For recording each title of a book, or other article, an entry fee of 50 cents is charged.

If the author desires a certificate of the entry of the title, an additional charge of 50 cents (making $1 in all) will be made. When a certificate is ordered, there should also be sent pinned (not pasted) to the application one uncanceled ten-cent internal revenue stamp, to be attached to such certificate. This makes the total amount which should be sent with the title of the book, or other article, $1.10, including the revenue stamp. If the applicant is not a citizen or resident of the United States, $1 is required to be paid for the recording of the title, which, if a certificate is required, makes the total fee to be transmitted with the title page $1.60, including the revenue stamp.

Postage stamps should not be sent as fees. All remittances should be by money order, or express order, payable to the Librarian of Congress.

By special act of Congress, all articles deposited in the Library of Congress, Copyright Department, to complete entries of copyright, are catalogued, and the titles are published in the weekly publication, entitled, "Catalogue of title entries of books, and other articles entered in the office of the Register of Copyrights, Library of Congress, at Washington, D. C., under the copyright law, wherein the copyright has been completed by the deposit of two copies." In this publication are given: The title of the article deposited; the name of the claimant of copyright; the date and entry number of the record of claim of copyright; and the number and date of the deposit of the copies sent to complete the copy-

right. This printed publication is equivalent to a published receipt for copies deposited to complete copyright and is the only form of receipt which the office is authorized by law to give, except that, if the author wishes it, a certified receipt can be given upon payment of the legal fee of 50 cents and one uncanceled ten-cent internal revenue stamp, which, when such receipt is desired, should be sent at the time of transmitting the final copies. No fee need accompany the final copies unless the author requests the certified receipt. Upon application to the Copyright Department official labels will be furnished without charge, by the use of which, books or other articles for deposit in completion of a copyright can be sent (regardless of weight) through the mails *free of charge.*

512. Works in More than One Volume.— In case of works published in parts or volumes, the title of each part or volume must be recorded as an independent work. Of newspapers, magazines, or other periodical publications, the title for each number, distinguished by volume, number, and date, is required to be filed as if it were a distinct work.

513. Notice of Copyright.— As has been seen, the first step toward the procurement of a copyright is the filing of the title-page, and the payment of the required fee. The second step is the filing of two copies of the best edition of the completed work. The third step requisite to secure any valid copyright, is the printing of the claim of copyright on each copy of the article protected. No copyright can

be protected against infringement unless the notice prescribed by law is inserted in every copy produced. The wording of the notice is determined by the copyright statute, and must be one or other of the two following forms: —

(a) Entered according to Act of Congress, in the year ..... by ..... in the office of the Librarian of Congress, at Washington; or,

(b) Copyright..... by .....

In either case the date of entry and the name of the claimant must be inserted in full.

514. Penalty for False Notice.— Any person who inserts the notice of copyright above set forth, or words of the same purport, in any book, or other article which has not been copyrighted, whether such article is subject to copyright or not, incurs a penalty of $100 for each offense.

515. Duration of Copyright.—The first term of copyright is for twenty-eight years from the time of recording the title in the Copyright Office. The title is recorded on the day of its receipt in the office, and no date prior to the day of receipt can be given to the entry of title, but upon request a title will be held a reasonable length of time and recorded upon some subsequent day, if desired.

516. Renewal.—Within six months before the expiration of the first term of copyright, the author, if he is still living, or his widow or children, if he is dead, can have the copyright continued for a further term of fourteen years. This renewal requires the filing of the title a second time, and the deposit of the

two copies on publication, exactly the same as in the case of an original copyright. The fees are also the same, but in the case of a renewal a certificate is obligatory, and this certificate of renewal must be published for the space of four weeks, in some one or more newspapers published in the United States. This publication of the certificate of renewal must occur within two months from date of renewal.

517. Assignments of Copyrights.—Copyrights are assignable, like patents, by an instrument in writing. This instrument should state the name of the assignor, the name of the assignee, the title of the article assigned, and should contain a statement of valuable consideration, and should be dated. Every Assignment must be recorded in the Copyright Office within sixty days after its execution, or it will be void as against subsequent purchasers or mortgagees, without notice. The fee for recording and certifying any instrument in writing operating as an assignment of a copyright, and being of ordinary length, is $1.00, and one uncanceled ten-cent internal revenue stamp, making $1.10 in all.

518. Periodicals.—The general title of a newspaper or periodical, apart from the contents, can not be protected under copyright. Each number of a periodical should be entered by its title, distinguished by a statement of the volume, number, and date of issue. Application can be made for the entry, in advance, by sending the printed title, with variations as to volume, number, and date written in, each issue requiring a separate fee. The entry of title should

precede publication, and two copies of each issue must be sent to the Librarian of Congress, Copyright Department, at the earliest moment after printing. Owing to the difficulty of insuring the receipt of the two copies of the newspaper in the Library of Congress on or before the day of publication, as required by law, it is a desirable precaution to obtain the postmaster's receipt, to serve, in case of need, as an evidence of the mailing of the two copies on or before the day of publication.

519. Copyright in Foreign Countries.—The benefits of copyright are available for the productions of American citizens by taking the steps required by the laws and regulations in force in each country. The United States is not a party to the International Copyright Union. Application should be made to the copyright bureau, or government officer charged with the administration of copyright business in each country. The best method of accomplishing this is by securing the services of an agent or publisher abroad.

520. Articles Not Subject to Copyright Protection.— The following articles, for which protection is frequently asked, are not subject to the provisions of the copyright law. No copyright will be granted for their benefit.

Account books.
Advertisements.
Advertising devices.
Advertising novelties.
Albums.
Articles of manufacture.
Articles subject to patents for designs.

Badges.
Ballots.
Bank notes.
Banners.
Betting books.
Blank agreements.
Blank books.
Blank cards.
Blank forms.
Blank price lists.
Book covers.
Books for minutes of societies.
Bonds.
Borders.
Box covers.
Business names.
Buttons.
Campaign medals.
Cards (identification).
Cards (playing).
Cards (postal).
Cards (score).
Catchwords.
Checks.
Coats of arms.
Coined words or names.
Contracts.
Coupons or coupon systems.
Crests.
Cuts for advertisements.
Cuts for articles of manufacture.

Dances.
Decorative articles.
Designs for badges or buttons, etc.
Devices.
Dollar advertisements.
Dolls.
Drafts.

Election tickets.
Emblems.
"Endless chains."
Engravings of manufactured articles.
Envelopes.

Fancy articles.
Fans.
Flags.
Forms of words.

Games.
Government publications.

Ideas.
Identification cards.
Insignia.

Labels.
Letter heads.

Manufactured articles.
Mechanical devices.
Medals.
Medicines.
Memorandum books.
Mere names, words, or phrases.

Names (business).
Names (coined).

Names of articles.
Names of companies.
Names of corporations
Names of libraries.
Names of medicines.
Names of products.
Names of substances.
Names (professional).
Names (stage).
Note headings.
Notes (promissory).
Novelties.

Ophthalmic test cards.
Ornamental articles.

Pads.
Paper hangings.
Paper weights.
Pass books.
Patterns.
Pedigree blanks.
Phrases or words.
Postal cards.
Pottery.
Prints for articles of manuture.
Professional names.
Promissory notes.
Public documents.
Puzzles.

Record books.
Regalia.

Scenery (stage).
Score books.
Scrap books.
Scrolls.
Seals.
Signs.
Specialty acts.
Stage business.
Stage curtains.
Stage scenes, or scenery.
Stamps.
Stickers.
Systems.

Tablets.
Test (ophthalmic) cards.
Tickets of any kind.
Time books.
Titles, as such.
Titles of libraries.
Titles of newspapers.
Titles of series.
Trademarks.

Utensils.

Words (coined).
Words or phrases.
Wrappers for articles to be sold.

521. Infringements.— An uncopyrighted work is public property after publication, and may be reproduced by any one. But one who, without authority, reproduces a copyrighted work is subject to an action

on behalf of the owner of the copyright for the recovery of such damages as have resulted by reason of such infringement. Courts will restrain by injunction the infringement of a copyright.

APPENDIX.

CONDENSED LAWS OF THE SEVERAL STATES OF THE UNION RELATING TO LIMITATIONS OF ACTIONS.

The several classes of obligations hereinafter named are barred by limitation (i. e., "outlawed") unless renewed within the number of years indicated by the figures set opposite the names of different States.

State	Accounts	Notes	Judgments Rendered by Courts of Record	Judgments Rendered by Courts not of Record
Alabama	3 years	6 years	20 years	6 years
Arizona	3	5	5	5
Arkansas	3	5	10	10
California	2	4	5	5
Colorado	6	6	10	6
Connecticut	6	6	no limit	no limit
Delaware	3	6	20	20
District of Columbia	3	3	12	12
Florida	4	5	20	20
Georgia	4	6	7	7
Idaho	4	5	6	6
Illinois	5	10	20	10
Indiana	6	10	20	20
Indian Territory	3	5	10	10
Iowa	5	10	20	10
Kansas	3	5	5	5
Kentucky	5	15	15	15
Louisiana	3	5	10	10
Maine	6	6	20	20
Maryland	3	3	12	12

Massachusetts	6	6	20	20
Michigan	6	6	10	6
Minnesota	6	6	10	10
Mississippi	3	6	7	7
Missouri	5	10	10	10
Montana	3	8	10	5
Nebraska	4	5	5	5
Nevada	4	6	6	6
New Hampshire	6	6	20	20
New Jersey	6	6	20	20
New Mexico	4	6	5	5
New York	6	6	20	6
North Carolina	3	3	10	7
North Dakota	6	6	10	10
Ohio	6	15	21	21
Oklahoma	3	5	5	5
Oregon	6	6	10	10
Pennsylvania	6	6	5	5
Rhode Island	6	6	20	20
South Carolina	6	6	20	20
South Dakota	6	6	20	20
Tennessee	6	6	10	10
Texas	2	4	10	10
Utah	4	6	8	8
Vermont	6	6	8	8
Virginia	3	5	20	20
Washington	3	6	6	6
West Virginia	5	10	10	10
Wisconsin	6	6	20	6
Wyoming	8	5	5	5

CONDENSED LAWS OF THE SEVERAL STATES RELATING TO THE FILING, RECORDING, AND RENEWING OF CHATTEL MORTGAGES.

State	Must Mortgage Be Filed?	Must Mortgage Be Recorded?	Must Mortgage Be Renewed?
Alabama	Yes	Yes	No
Arizona	Yes	No	No
Arkansas	Yes	Yes	No
California	No	Yes	No
Colorado	Yes	Yes	Yes
Connecticut	No	Yes	No
Delaware	No	Yes	No
District of Columbia	No	Yes	No
Florida	No	Yes	No
Georgia	No	Yes	No
Idaho	No	Yes	No
Illinois	No	Yes	Yes
Indiana	No	Yes	No
Indian Territory	Yes	Yes	Yes
Iowa	No	Yes	No
Kansas	Yes	No	Yes
Kentucky	No	Yes	No
Louisiana	Chattel mortgages are unknown in this State.		
Maine	No	Yes	No
Maryland	No	Yes	No
Massachusetts	No	Yes	No
Michigan	Yes	No	Yes
Minnesota	Yes	No	No
Mississippi	No	Yes	No
Missouri	Yes	Yes	No

Montana	Yes	No	Yes
Nebraska	Yes	No	No
Nevada	No	Yes	No
New Hampshire	No	Yes	No
New Jersey	No	Yes	No
New Mexico	Yes	No	Yes
New York	Yes	No	Yes
North Carolina	No	Yes	No
North Dakota	Yes	No	Yes
Ohio	Yes	No	Yes
Oklahoma	Yes	No	Yes
Oregon	Yes	Yes	Yes
Pennsylvania	No	Yes	Yes
South Carolina	No	Yes	No
South Dakota	Yes	No	Yes
Tennessee	No	Yes	No
Texas	No	Yes	No
Utah	No	Yes	Yes
Vermont	No	Yes	No
Virginia	No	Yes	No
Washington	Yes	Yes	No
West Virginia	No	Yes	No
Wisconsin	Yes	No	Yes
Wyoming	No	Yes	Yes

CONDENSED LAWS OF THE SEVERAL STATES OF THE UNION RELATING TO INTEREST RATES AND PENALTIES FOR USURY.

State	Per Centum Legal Rate	Per Centum Contract Rate	Penalty for Usury
Alabama	8	8	Forfeiture of interest
Arizona	7	Any	No penalty
Arkansas	6	10	Forfeiture of contract
California	7	Any	No penalty
Colorado	8	Any	No penalty
Connecticut	6	Any	No penalty
Delaware	6	6	Forfeiture of contract
Dis. of Columbia	6	10	Forfeiture of interest
Florida	8	10	Forfeiture of interest
Georgia	7	8	Forfeiture of excess
Idaho	7	12	Forfeiture of 10% of principal
Illinois	5	7	Forfeiture of all interest
Indiana	6	8	Forfeiture of interest above 6%
Indian Ter	6	10	Forfeiture of principal and interest
Iowa	6	8	Forfeiture of interest and costs
Kansas	6	10	Forfeiture double amt. usurious int.
Kentucky	6	6	Forfeiture of excess
Louisiana	5	8	Forfeiture of interest
Maine	6	Any	No penalty
Maryland	6	6	Forfeiture of excess
Massachusetts	6	Any	No penalty
Michigan	5	7	Forfeiture of interest
Minnesota	7	10	Forfeiture of principal and interest
Mississippi	6	10	Forfeiture of interest
Missouri	6	8	Forfeiture of 10% interest

Montana.....	10	Any	No penalty
Nebraska.....	7	10	Forfeiture of all interest
Nevada.....	7	Any	No penalty
New Hampshire	6	6	Forfeiture of three times excess
New Jersey....	6	6	Forfeiture of interest and costs
New Mexico...	6	12	Forfeiture of double excess and a fine
New York.....	6	6	Forfeiture of principal and interest
North Carolina.	6	6	Forfeiture of interest, also penalty
North Dakota..	7	12	Forfeiture of interest
Ohio.....	6	8	Forfeiture of interest above 6%
Oklahoma.....	7	12	Forfeiture of interest
Oregon.....	8	10	Forfeiture of principal and interest
Pennsylvania...	6	6	Forfeiture of excess
Rhode Island...	6	Any	No penalty
South Carolina.	7	8	Forfeiture double excess collected
South Dakota..	7	12	Forfeiture of interest, also penalty
Tennessee.....	6	6	Forfeiture of excess of interest
Texas.....	6	10	Forfeiture of interest
Utah.....	8	Any	No penalty
Vermont.....	6	6	Forfeiture of excess
Virginia.....	6	6	Forfeiture of interest
Washington....	7	12	Forfeiture double interest and costs
West Virginia..	6	6	Forfeiture of excess
Wisconsin.....	6	10	Forfeiture of interest
Wyoming.....	8	12	Forfeiture of interest

CONDENSED LAWS OF THE SEVERAL STATES OF THE UNION RELATING TO THE ALLOWANCE OF DAYS OF GRACE.

STATE.	ALLOWED ON SIGHT PAPER	ALLOWED ON TIME PAPER	REMARKS
Alabama	Yes	Yes	
Arizona	Yes	Yes	
Arkansas	Yes	Yes	
California	No	No	
Colorado	No	Yes	
Connecticut	No	No	
Delaware	No	Yes	
Dis. of Columbia	No	No	
Florida	No	Yes	
Georgia	No	Yes	
Idaho	No	No	
Illinois	No	No	
Indiana	Yes	Yes	
Indian Ter.	Yes	Yes	
Iowa	Yes	Yes	Grace not allowed on demand paper
Kansas	No	Yes	
Kentucky	Yes	Yes	Grace not allowed on demand paper
Louisiana	No	Yes	
Maine	Yes	No	Grace not allowed on demand paper
Maryland	No	No	
Massachusetts	Yes	No	Grace not allowed on demand paper
Michigan	No	Yes	" " " " " "
Minnesota	Yes	Yes	" " " " " "
Mississippi	Yes	Yes	
Missouri	No	Yes	
Montana	No	No	

Nebraska	Yes	Yes	Grace not allowed on demand paper
Nevada	No	Yes	
N. Hampshire	No	Yes	
New Jersey	No	No	
New Mexico	Yes	Yes	
New York	No	No	
North Carolina	Yes	Yes	Grace not allowed on demand paper
North Dakota	No	No	
Ohio	No	No	
Oklahoma	Yes	Yes	
Oregon	No	No	
Pennsylvania	No	No	
Rhode Island	Yes	Yes	
South Carolina	Yes	Yes	Grace not allowed on demand paper
South Dakota	Yes	Yes	
Tennessee	No	Yes	
Texas	Yes	Yes	Grace not allowed on demand paper
Utah	No	No	
Vermont	No	No	
Virginia	No	Yes	
Washington	Yes	Yes	
West Virginia	Yes	Yes	
Wisconsin	No	No	
Wyoming	Yes	Yes	

CONDENSED LAWS OF THE SEVERAL STATES OF THE UNION RELATING TO THAT PORTION OF THE STATUTE OF FRAUDS CONCERNING PERSONAL PROPERTY.

It is generally provided by the Statute of Frauds that no contract for the sale of any goods, wares, and merchandise exceeding a certain price shall be valid,

(a) Unless the purchaser receive and accept all or a part of the goods purchased, or —

(b) Unless the purchaser pay all or a portion of the purchase price, or —

(c) Unless there shall be a written note or memorandum of the bargain, signed by the parties to be charged thereby or their authorized agents.

The price fixed as the limit of verbal contracts for the purchase of goods where no delivery or payment is made is as follows in the several States: —

State.	Price.	State.	Price.
Alabama	Not in force	District of Columbia	$50
Alaska	$50	Florida	Any price
Arizona	Any price	Georgia	$50
Arkansas	$ 30	Idaho	200
California	200	Illinois	Not in force
Colorado	50	Indiana	$50
Connecticut	50	Indian Territory	50
Delaware	25	Iowa	Any price

(Continued.)

Kansas	Not in force	North Dakota	$50
Kentucky	Not in force	Ohio	Not in force
Louisiana	$500	Oklahoma	$50
Maine	30	Oregon	50
Maryland	50	Pennsylvania	Not in force
Massachuetts	50	Rhode Island	" " "
Minnesota	50	South Carolina	$50
Mississippi	50	South Dakota	50
Missouri	30	Tennessee	Not in force
Montana	200	Texas	" " "
Nebraska	50	Utah	$300
Nevada	50	Vermont	40
New Hampshire	33	Virginia	Not in force
New Jersey	30	Washington	$50
New Mexico	50	West Virginia	Not in force
New York	50	Wisconsin	$50
North Carolina	Not in force	Wyoming	50

INTERNAL REVENUE STAMP TAXES.

An alphabetically arranged list of the taxes imposed by the Stamp Act of 1898.

Agreement for hire of land, not exceeding one year	$ .25
one to three years	.50
exceeding three years	1.00
Bank Check	.02
Bill of Lading	.01
each duplicate	.01
Bond, for payment of money, per $100	.05
indemnity	.50
Certificate of Deposit, payable at sight	.02
payable otherwise than at sight, per $100	.02
Certificate of any kind required by law	.10
Certificate of Stock, on each $100 face value	.05
agreement to purchase or sell, each $100	.02
transfer, per $100 face value	.02
Conveyances of Real Estate, under $100	none
from $100 to $500	.50
for each additional $500	.50
Draft, sight	.02
otherwise than at sight, on each $100	.02
protest of draft	.25
Insurance, life, on each $100 of indemnity	.08
marine, inland, fire, casualty, fidelity, and guarantee, on each $1 of premium	.00½
transfer of policy requires same stamps as original.	
Lease (see agreement).	
Message, telephone, charge of over 15 cts	.01
telegraph	.01

Mortgage, up to $1,000	none
$1,000 to $1,500	.25
each additional $500	.25
assignment of, up to $1,000	none
$1,000 to $1,500	.25
each additional $500	.25
Note, promissory, on each $100	.02
protest of note	.25
Power of Attorney, for voting shares of stock	.10
to transfer property	.25
Proxy, for voting	.10
Receipt, express	.01
shipping	.01
warehouse	.25
Renewals, of notes, etc., same as original.	
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